THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

<u>CIVIL REVISION PETITION Nos.2315 AND 2357 OF 2017</u>

<u>COMMON ORDER</u>:

C.R.P.Nos.2315 and 2357 of 2017 are filed assailing the common order dated 25.01.2017 in I.A.Nos.1171 and 1172 of 2016 in O.S.No.27 of 2015 passed by the II Additional District Judge, Parvathipuram.

The petitioner is the plaintiff, who filed the suit for specific performance of agreement of sale dated 04.03.2012 against the defendant. The respondent/defendant is the General Power of Attorney holder of Kudamala Rajeswari and Bodduru Hema Sundararao by virtue of registered general power of attorney-cum-sale agreement and the respondent offered to sell the plaint schedule property and entered into agreement to purchase the property at Rs.5,60,000/- per acre and respondent executed an agreement of sale on 04.03.2012. As per the terms of the sale agreement dated 04.03.2012, the plaintiff paid an amount of Rs.10,00,000/- as advance sale consideration and it is agreed that the land has to be measured and then the balance sale consideration will be paid within four months from the date of agreement and the regular sale deed would be executed by the defendant on the same day and registration and other incidental charges shall be borne out by the plaintiff. Subsequently, the defendant demanded a sum of Rs.5,00,000/- out of balance sale consideration, accordingly the plaintiff paid Rs.5,00,000/- on 06.07.2012 and on 07.07.2012 the defendant issued a receipt for Rs.4,90,000/-. As the receipt being an important document was not available at the time of filing of the suit, and non-filing of it in time is not wanton, the plaintiff filed I.A.No.1172 of 2016 to receive the said receipt by condoning the delay in filing the same and also filed I.A.No.1171 of 2016 to recall P.W.1 for marking the said receipt.

The trial Court on consideration of the pleadings in the plaint has came to conclusion that as per the pleadings, an amount of Rs.5,00,000/- was demanded by the defendant and accordingly, the plaintiff paid the said amount on 06.07.2012, but the receipt which is sought to be received in evidence was issued on 07.07.2012 for a sum of Rs.4,90,000/- and as the receipt is an unstamped receipt, it is inadmissible evidence under Section 35 of the Indian Stamp Act, 1899, the trial Court dismissed the I.As. holding that the plaintiff is not entitled to file the said receipt without there being any pleading to that effect.

Learned counsel for the revision petitioner submits that the receipt which is sought to be filed in evidence was for an amount of Rs.4,90,000/- and it contains the signature of the defendant and the amount was paid on the date mentioned therein. As the said receipt was not available at the time of filing of the plaint, the petitioner/plaintiff filed the said I.As. and submitted that no prejudice would be caused to the defendant in case if the document is marked in evidence. Learned counsel for the petitioner placed reliance on the decision reported in **Bada Bodaiah and another v. Bada Lingaswamy and others**[1]**,** wherein this Court held that

> "A reading of Rule 1 of Order XIII alone would show that the Court shall receive the documents produced on or before the settlement of issues if the copies thereof have been filed along with the plaint or written

[1] 2003(1) An.W.R.131(A.P.)

> statement. The Court has no power to receive the documents produced subsequently. Further, Sub-rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit. Order XIII Rule 1 and Order VII Rule 14 (3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage. Non-mentioning of the documents sought to be produced at the subsequent stage is a curable defect. With leave of Court, which is condition precedent under Sub-rule (3) of Rule 4 of Order VII read with Sub-rule (1) of Order 13 to receive the documents, documents can be produced at the time of trial. But Order VII Rule 14(3) being an exception to the rule in Order VII Rule 14(1) as well as Order XII Rule 1(1)(2), the power to grant must be exercised in rare cases and not in a routine manner.
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> The Trial Court in my opinion committed clear error in coming to the conclusion that the documents sought to be produced are irrelevant and that no mention of the same was made in the pleadings or in the earlier proceedings."

It is submitted by the learned counsel for the petitioner that in the light of the above decision, the receipt can be received and can be marked through P.W.1 as the document was not traced at the time of filing of the suit and subsequently it was traced and as the document was not available, the petitioner/plaintiff could not mention the correct date and amount as mentioned in the receipt. Therefore, the petitioner must be given an opportunity to prove his case by producing the document.

Learned counsel for the respondent/defendant submits that the petitioner/plaintiff has filed a suit for specific performance of agreement of sale wherein a specific plea has been taken that on a particular day particular amount was paid by the defendant but no receipt has been filed at the time of filing of the suit. It is submitted that subsequently the plaintiff wants to file a document without taking a plea in the plaint with regard to the nature of the document and without there being any pleading to that effect. Therefore, the trial Court dismissed the applications. It is further submitted that the petitions are misconceived and the same may be dismissed with exemplary costs.

It is pertinent to note that the plaintiff has taken a specific stand in the plaint that Rs.5,00,000/- was paid as balance sale consideration to the defendant. But subsequently the plaintiff traced the receipt which shows that there is a change of date and also the amount and therefore, the plaintiff wants to mark the document in his evidence. As rightly pointed out by the trial Court that there must be a pleading with regard to subsequent events that the plaintiff has traced the receipt which contains the changed date and amount and if the plaintiff takes such a plea, he has to prove the same by adducing evidence in that regard and the defendant also will have to be put on notice to that effect and the defendant can also file his pleadings to that effect.

On consideration of these facts, I do not see any valid grounds to interfere with the findings of the trial Court in dismissing the petitions filed by the petitioner, but however in the light of the decision cited by the learned counsel for the petitioner, the petitioner can seek appropriate remedies before the trial Court by filing a petition for amendment of the plaint to that effect and the trial Court may consider the petition on merits irrespective of the observations made in this revision petition. The petitioner/plaintiff is at liberty to take appropriate remedies available to him before the trial Court.

With the above observation, the Civil Revision Petitions are disposed of giving liberty to the petitioner to approach the trial Court seeking appropriate remedies available to him. No costs.

The Miscellaneous Petitions, if any, pending in these petitions shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 28.07.2017
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