

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.165 of 2016

ORDER:

This is a civil revision petition under Article 227 of the Constitution of India by the unsuccessful 1st respondent/plaintiff assailing the orders dated 23.12.2015 of the learned III Additional Junior Civil Judge, Ongole, made in I.A.No.280 of 2015 in O.S.No.247 of 2004 filed by the petitioner/ 2nd defendant under Order VIII Rule 1 of the Code of Civil Procedure Code, 1908 requesting to condone delay in filing the petition listed documents.

2. I have heard the submissions of *Sri J.Seshagiri Rao*, learned counsel for the revision petitioner/plaintiff (herein after, 'plaintiff'), and of *Sri T.Sreedhar*, learned counsel for the 2nd defendant/respondent herein (hereinafter, '2nd defendant'). I have perused the material record.

3. The case of the 2nd defendant, in brief, is this: "The plaintiff filed the suit against the defendants 1 and 2 for specific performance of alleged agreement of sale dated 23.06.1997. The 2nd defendant filed a written statement resisting the suit. The petition listed documents were filed by them are certified copies obtained from the authorities concerned. The 2nd defendant could not file the said documents earlier as they could not trace them from the records. There are no wilful laches on his part in not filing the documents earlier. The said documents are sale deeds dated 25.07.2003 and 12.7.1985; certified copies of petition and counter in M.C.25 of 2002; certified copy of Award passed by the D.L.S.A in M.C.No.25 of 2002; and, certified copy of the vakalat. Counsel advised them to file them as Exhibits B1 to B6. The said documents are very much essential to prove his defence and *bona fide* contentions. The documents are absolutely necessary for proper adjudication of the *lis*. Hence, it is just and necessary and it is in the interests of justice to

receive the said documents and permit the 2nd defendant to mark them as Exhibits B1 to B6.”

4. The case of the plaintiff, in brief, is this: “The petition is not a *bona fide* one. The averments that the petition listed documents are certified copies obtained from the concerned authorities and that their counsel advised them to file the same as exhibits B1 to B7 and that the said documents are very essential to prove their defence and *bona fide* contentions and that the 2nd defendant could not file the said documents earlier as they could not trace the same from the records and that the documents are necessary for proper adjudication and that there are no wilful laches on the part of the 2nd defendant in not filing the said documents earlier, are all false allegations. The delay in filing the said documents is not properly explained. The relevancy of the present documents is not explained by the 2nd defendant in his affidavit. The subject petition is filed to drag on the proceedings and further delay the adjudication of the main suit. It is not explained as to how the petition listed documents are essential to prove the case of the 2nd defendant. In his written statement, the 2nd defendant did not take such defence regarding the documents. Proper procedure was not followed in filing the subject documents. Hence, the petition is liable to be dismissed with exemplary costs.”

5. On merits, the trial Court allowed the petition of the 2nd defendant and granted leave to file and mark the documents. Therefore, the aggrieved plaintiff is before this Court.

6. Now, the point for determination is: --

Whether the 2nd defendant had not made out valid and sufficient grounds to grant leave to file the petition listed documents? And if so, whether the order of the Court below is not sustainable and is liable to be set aside?

7. POINT:

7. (a) The plaintiff had brought the suit against the defendants 1 and 2 for specific performance of an agreement of sale dated 23.06.1997. The suit is coming up for evidence of the 2nd defendant. At that stage, the 2nd defendant filed the petition listed documents seeking leave and condonation of delay in filing the said documents. The plaintiff is resisting the said petition *inter alia* stating that the relevancy of the present documents and the delay in filing the said documents is not explained by the 2nd defendant in his affidavit and that the petition to receive the documents was filed only with a view to drag on the proceedings and further delay the adjudication of the main suit.

7. (b) At the hearing before this Court, learned counsel for the parties reiterated the respective contentions, which are already stated supra, and therefore, there is no need to dilate on the said aspects.

7. (c) Learned counsel for the plaintiff while reiterating the contentions of the plaintiff would further submit as follows: 'The decision of the Court below which is contrary to law and unjust resulted in irreparable loss and hardship to the plaintiff. The 2nd defendant has not shown any valid reasons for the delay in filing the documents. The Court below ought to have seen that the relevancy of the documents is not explained and that no plea specifically was taken in the written statement with regard to the subject documents and that, therefore, the 2nd defendant is not entitled to file the documents. The Court below ought to have seen that the present petition was filed at a belated stage when the suit is posted for evidence of the 2nd defendant and hence, the Court below ought to have dismissed the petition and ought not to have received the documents on file. Though on a combined reading of Sub Rule (1) and 1-A of Order VIII of the Code, it appears that the Court has discretionary power to receive documents, the Court below ought to have seen that no satisfactory reasons are given by the 1st respondent for filing the subject

application at a belated stage. The Court below ought to have seen that as per the judgment in 2011 (3) LS 12, the 2nd defendant is not entitled to seek permission of the Court for receiving the said documents. The Court below erred in observing that the plaintiff/revision petitioner can raise objections with regard to the admissibility of the documents at the time of marking. The conclusions and findings of the lower Court in the order impugned are illegal, unjust and hence the impugned order is liable to be set aside.'

7. (d) Per contra the learned counsel for the 2nd defendant while supporting the orders of the Court below submitted that the two of the documents are sale deeds and that the other documents are certified copies of public documents viz., pleadings in a case and an award passed by the DLSA and also a vakalat filed in a court proceedings and that their authenticity cannot be doubted and that the matter is before the trial Court and that the material facts are pleaded in the defence and that the documents are being produced to support the said contentions in the defence and that the documents are very much necessary to substantiate the defence and also for effective adjudication of the issues involved in the suit and that the trial Court had exercised its discretion judiciously and that there is neither illegality nor irregularity in the order impugned and in allowing the 2nd defendant to file the documents no prejudice has occasioned to the other side considering the nature of the documents and hence, the well considered orders of the trial Court need no interference and that when the matter is before the trial Court it is always in the interest of justice to accord permission to file any documents and to permit to have the cause decided on merits instead of denying such opportunity only for technical reasons.

8. Before proceeding further, it is profitable to refer to the relevant provision of Order VIII Rule 1-A of the Code, which read as under:

Rule 1-A : Duty of defendant to produce documents upon which relief is claimed or relied upon by him:- (1) Where 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, to be filed with the written statement.

(2) 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.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

- (4) Nothing in this rule shall apply to documents –
- (a) produced for the cross-examination of plaintiff's witnesses, or
 - (b) handed over to a witness merely to refresh his memory."

Sub-rule (1) of Rule 1-A postulates that the defendant shall enter in a list, the documents referred to therein and produce the same in Court when the written statement is presented by him and also deliver copies thereof along with the written statement. Sub rule 3 says that if any such document which ought to be produced in Court is not so produced, the same cannot, without the leave of the Court, be received in evidence at the hearing of the suit.

Notably, Rule 2 (1) of Order VI of the Code reads as under:

Pleading to state material facts and not evidence:- (1) Every pleading shall contain, and contain only, a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

It is also relevant to note that "Evidence" means and includes- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents produced for the inspection of the Court; such documents are called documentary evidence.

9. I have bestowed my attention to the facts and given detailed and thoughtful consideration to the submissions. In a suit for specific performance, the 2nd defendant, during the course of trial, that is, at a stage when the suit is

coming for the evidence on the side of the 2nd defendant, filed the subject application for receiving documents on file after granting necessary leave. The details of the documents to the extent necessary are stated supra. One of the specific contentions is that the authenticity of the said documents need not be doubted considering the nature of the said documents. The rival contention is that the documents are not relevant. In the well considered view of this Court, at the time of considering a request to receive documents on file by granting necessary leave, the Court will only consider the aspect of delay in filing the documents and would examine as to whether or not a case is made out for granting leave, but the Court will not consider the aspects like relevancy, admissibility, proof and probative value of the documents. The petitions to receive documents will usually be allowed subject to the caveat 'the documents are received on file subject to relevancy, admissibility and proof. The aspects of relevancy and admissibility of the documents will generally be considered at the time of marking, that is, at a time when a witness tenders the same for marking. The settled law is that mere marking is not proof. Further, the aspect as to whether or not the document or the contents of a document are proved and the further aspect of probative value document will be examined and determined at a later stage of appreciation of evidence, that is, at the time of answering the issues settled in the suit for determination. Further, the trial Court in its orders, made it very clear that the plaintiff is at liberty to raise any objections regarding admissibility of documents as and when the documents come to be tendered in evidence. In the well considered view of this Court, an opportunity to file a document cannot be denied to a party merely on the ground of delay. Be it noted that the law is well settled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. It is well settled principle that in case 'sufficient cause' is shown for filing the documents at the hearing of the suit and/or at the end of the trial, such cause shown

should receive a liberal construction so as to advance the cause of substantial justice, more particularly when the documents sought to be filed, are copies of public documents and in the opinion of the trial Court may have a bearing on the aspects to be taken into consideration for the determination of the real controversy and the principal issue/ s involved in the suit. And what constitutes a sufficient cause always depends up on the facts and circumstances of a particular case. Hence, the application need not be rejected merely on the ground of delay, but the test shall be whether sufficient cause is made out for granting leave. In the facts and circumstances of instant case, neither the explanation for the delay can be termed as casual nor can the delay be termed as deliberate. There are no circumstances to hold that the delay was deliberate and was on account of culpable negligence and mala fides on the part of the 2nd defendant. The provision of law of the Code confers discretionary power on the Court to grant leave and receive documents at the hearing of the suit. If the 2nd defendant herein is given an opportunity to file the documents by granting leave and eventually if the documents come to be exhibited, the entire oral and documentary evidence would be before the trial Court and the same may be helpful to the trial Court in arriving at a just decision in the matter. In the facts and circumstances of the case, the request of the 2nd defendant merits consideration. In the light of the facts peculiar to the case and the reasons aforesated, the decision, in Voruganti Naryana Rao v. Bodla Rammurthy and others [2011 (3) LS 12], which eventually turned on the facts of that case is not helpful to the plaintiff/ revision petitioner.

10. Viewed thus, this Court finds that the trial Court is justified in passing the impugned order and that the order of the trial Court does not suffer from any illegality or irregularity and, therefore, it does not brook interference, in the facts and circumstances of the case. Accordingly, this Court finds that the revision is devoid of merit and is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed, however, clarifying that the plaintiff is at liberty to raise any objections, which the law permits, as and when the documents are tendered in evidence and that the trial Court shall consider such objections raised either at the stage of marking or at a later appropriate stage, depending upon the nature of the objections and the law governing consideration of such objections. It is also made clear that if any objections regarding the admissibility of any document are raised on grounds of sufficiency/ deficiency of stamp duty and/ or requirement of registration, the trial Court, by following the settled legal position, shall decide such objections before marking the documents.

There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

02nd January 2017
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M. SEETHARAMA MURTI, J