

* THE HON'BLE SRI JUSTICE A.V.SESHA SAI

± C.R.P.No.1153 of 2017

%16.6.2016

The Managing Director,
Andhra Pradesh State Road Transport Corporation,
Hyderabad, present at Pandit Nehru Bus Station,
Vijayawada, Krishna District and three others.

...Revision
Petitioners/petitioners/
defendants

VERSUS

\$ P.V.Surya Narayana, S/o. P.V., Basanna,
Hindu, Aged about 66 years, Agriculturist,
R/o. Kothacheruvu (V & M),
Anantapur District.

...Respondent/respondent/plaintiff

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> HEAD NOTE:

!Counsel for Petitioners: Sri Aravala Rama Rao

^ Counsel for Respondents: Sri A.Hanumantha Reddy

? Cases referred

¹ (2011) 11 SCC 275

² 2015 (1) ALT 330

³ 2005 (3) ALT 87 (D.B)

⁴ 2014 (3) ALT 83

⁵ 2009 (3) ALT 236

⁶ 2011 (6) ALT 299

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.1153 of 2017

ORDER:

Defendants in O.S.No.99 of 2011, on the file of the Court of the learned Senior Civil Judge, Penukonda, Anantapur District, are the petitioners in the present revision filed under Article 227 of the Constitution of India. This revision calls in question order dated 21.12.2016 passed by the said Court in I.A.No.447 of 2016.

2. The respondent herein instituted the above mentioned suit against the petitioners herein for cancellation of a Gift Deed dated 05.11.1998 executed by the plaintiff in respect of the plaint schedule property in favour of the defendants and for a decree for Rs.25,000/- towards compensation apart from costs.

3. The defendants/petitioners herein filed a written statement in the month of November, 2011 denying the plaint pleadings while praying for dismissal of the suit. After the closure of the evidence on behalf of the plaintiffs, the defendants/petitioners herein filed I.A.No.447 of 2016 under the provisions of Order VIII Rule 1A(3) r/w Section 151 of the Code of Civil Procedure praying the Court below to receive the documents enclosed to the said application by condoning the delay in filing the same.

4. The plaintiff/respondent herein resisted the said application by way of filing counter. The learned Senior Civil Judge, Penukonda, by way of the order under challenge, dismissed the said application. This revision assails the validity and the legal sustainability of the said order passed by the learned Senior Civil Judge.

5. Heard Sri Aravala Rama Rao, learned Standing Counsel for the A.P. State Road Transport Corporation for the petitioners and Sri A.Hanumantha

Reddy for the respondent apart from perusing the material available before the Court.

6. It is contended by the learned Standing Counsel for the petitioners State Road Transport Corporation that the questioned order is highly erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order VIII Rule 1 (3) of the Code of Civil Procedure. It is further submitted by the learned counsel for the petitioners that the documents proposed to be filed before the Court below are very crucial and would be highly helpful for the Court to come to a just and reasonable conclusion. It is further submitted that on the ground of mere delay the petitioners herein cannot be non-suited and the Court below grossly erred in not considering the categoric averments of the petitioners in the affidavit filed in support of the application that the documents could be traced out recently. It is further argued by the learned counsel that in the event of the present application being allowed, the same would not cause any prejudice to the respondent herein. According to the learned counsel for the petitioners the reasons assigned by the learned Judge are neither sustainable nor tenable in the eye of law.

7. To bolster his submissions and contentions, the learned Standing Counsel for the petitioners places reliance on the judgment of the Hon'ble Supreme Court in *K.K.VELUSAMY v. N.PALANISAMY*¹ and the judgments of this Court in *GPR HOUSING PRIVATE LIMITED v. C.PRITHVI RAJ REDDY*², *DASUPUTRUNI SURYANARAYANA v. DASUPUTRUNI ADINARAYANA AND OTHERS*³ and *JOHN SANTIYAGO v. CLEMENT DASS AND OTHERS*⁴.

¹ (2011) 11 SCC 275

² 2015 (1) ALT 330

³ 2005 (3) ALT 87 (D.B)

⁴ 2014 (3) ALT 83

8. On the contrary, the learned counsel for the plaintiff/respondent herein contends that there is no illegality nor there is any jurisdictional error in the impugned order and in the absence of the same the order passed by the learned Senior Civil Judge is not amenable for any judicial review under Article 227 of the Constitution of India. According to the learned counsel, the defendants in the affidavit filed in support of the present application in the Court below did not assign any valid and proper reasons for not filing the proposed documents along with the written statement. It is further submitted that the proposed documents are not relevant for adjudication in the present case.

9. In support of his submissions and contentions, learned counsel for the respondent takes the support of the judgments of this Court in *RAVI SATISH v. EDALA DURGA PRASAD*⁵ and *VORUGANTI NARAYANA RAO v. BODLA RAMMURTHY AND OTHERS*⁶.

10. In the above backdrop, now the point that arises for consideration of this Court is_Whether the order passed by the learned Senior Civil Judge is in accordance with the provisions of Order VIII Rule 1A (3) of the Code of Civil Procedure or whether the same requires any correction by this Court under Article 227 of the Constitution of India?

11. There is absolutely no controversy on the reality that the respondent herein instituted the present suit as long back as on 18.04.2011 and the defendants/petitioners herein filed a written statement in the month of November, 2011. It is pleaded in the plaint categorically that recently just before issuance of notice dated 18.04.2010, the APSRTC put up a notice in the plaint schedule property and in the bus station at Puttaparthi inviting persons to take the building in the plaint schedule property on lease for

⁵ 2009 (3) ALT 236

⁶ 2011 (6) ALT 299

running a school or a college or any office. The sum and substance of the case of the plaintiff is that the said action on the part of the Road Transport Corporation is contrary to the recitals in the Gift Deed.

12. In the affidavit filed in support of the present I.A.No.447 of 2016 the defendants stated that at the material time of filing counter and chief examination affidavit, some of the important documents could not be filed and the same are very essential and crucial to prove the case of the defendants and the said documents could be recently traced out. While stating so, the defendants/petitioners herein prayed the Court below to condone the delay in receiving the said documents. Admittedly, in the present suit, recording of evidence on behalf of the plaintiffs came to an end. Except stating that at the time of filing counter and chief examination affidavits the documents could not be filed and they could be traced recently, no other reason is forthcoming nor did the petitioners state clearly the reasons for not filing the said documents along with the written statement. If the reason as stated in the present affidavit is treated as a reasonable one, the same can be a reason in each and every case. In the considered opinion of this Court, the said reason assigned by the petitioners herein, by any stretch of imagination, cannot be said to be a valid reason. The petitioners herein even did not state in the affidavit that despite their due diligence, the proposed documents could not be traced out at the relevant point of time.

13. Coming to the judgments cited by the learned Standing Counsel for the petitioners Corporation_ in the case of *K.K. VELUSAMY (supra 1)* , the Hon'ble Apex Court while dealing with the scope of Order 18 Rule 17 and the power of Court under Section 151 of the Code of Civil Procedure, categorically held that the power under Section 151 or Order 18 Rule 17 of the Code of Civil Procedure are not intended to be used routinely, merely for

the asking and if so used it will defeat the very purpose of various amendments to the code to expedite trials. The Hon'ble Apex Court further ruled that where the application is found to be *bona fide* and where the additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issues and will assist in rendering justice and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence. The Hon'ble Supreme Court further held that if the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. In the instant case, it is very much evident from a reading of the affidavit filed in support of the application that the petitioners herein utterly failed in laying any foundation to show that despite due diligence the proposed documents could not be produced earlier. Therefore, the above judgment would not render any assistance to the petitioners herein.

14. In the case of *GPR HOUSING PRIVATE LIMITED (supra 2)*, this Court at paragraph 11 held that mere delay in filing the application would not constitute the sole ground for rejecting the leave. In the instant case, it is not the mere delay which prompted the Court below to dismiss the application and on the other hand, the Court below dismissed the application on other aspects which are germane for consideration of the application.

15. In the case of *DASUPUTRUNI SURYANARAYANA (supra 3)*, this Court held that the question as to whether a particular document is sale agreement or possessory agreement cannot be gone into at that stage. Absolutely there cannot be any dispute with regard to the legal position and

in fact the said judgment also would not render any assistance to the petitioners herein.

16. In *JOHN SANTI YAGO (supra 4)*, this Court held that mere absence of plea with a specific reference to a document is not fatal to the case. Having regard to these circumstances and in the absence of any due diligence on the part of the petitioners the principle laid down in the said judgment cannot be pressed into service. In the said judgment this Court also dealt with the aspect of delay.

17. Coming to the judgments cited by the learned counsel for the respondents in the case of *RAVI SATISH (supra 5)*, this Court while dealing with the provisions of Order VIII Rule 1-A (3) of the Code of Civil Procedure, ruled that grant of leave under this provision of law cannot be for a mere asking nor the Court is a mere post-office to receive documents even in the absence of any reasons being furnished for failure to file the said documents along with the written statement. This Court further held that having chosen not to give any reasons, it is not open to the petitioners therein to contend that the Court below should have received the documents, since the petitioner's right could be adversely affected for failure on its part to receive the documents. This Court also took note of the aspect that admissibility and proof of documents are matters which ought not to be gone into at the time of receipt of documents. This Court further held that the leave sought for can only be granted on adequate reasons being furnished justifying failure on the part of the applicant in not filing the documents along with the written statement earlier. This Court also repelled the contention that no prejudice would be caused to the other side.

18. In the case of *VORUGANTI NARAYANA RAO (supra 6)*, this Court while noting the object behind the amendments made to the Code of Civil

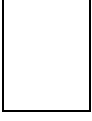
Procedure by virtue of Act 46 of 1999 with effect from 01.07.2002 categorically found that unless the reasons assigned by the defendant disclose sufficient cause for his failure to produce the documents within the time stipulated in Rule 1-A of Order VIII C.P.C., the Court shall not permit the defendants later. This Court also observed in the said case with regard to the absence of any pleadings that despite due diligence the documents could not be traced out and that the defendants did not state as to when the documents were traced out.

19. The principles laid down in the judgments cited by the learned counsel for the respondents are squarely applicable to the facts and circumstances of the case. It is also settled principle of law that unless the order impugned suffers from jurisdictional error or patent perversity, the power of judicial review under Article 227 of the Constitution of India cannot be pressed into service. Therefore, this Court has absolutely no scintilla of hesitation nor any shadow of doubt to hold that the order under challenge does not warrant any interference by this Court under Article 227 of the Constitution of India.

20. For the aforesaid reasons, the revision is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 16.06.2017
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A.V.SESHA SAI, J



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



Dated:16-06-2017

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