

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.1344 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/defendant is directed against the order, dated 25.11.2016, of the learned I Additional Junior Civil Judge, L.B.Nagar, Ranga Reddy District passed in I.A.No.807 of 2010 in O.S.No.691 of 2015.

2. Be it noted that the challenge to the aforesaid order in this revision is only with respect to the refusal to grant leave to file the CD, which is also filed along with other documents viz., copies of documents obtained under the provisions of the RTI Act, photographs, etcetera.

3. I have heard the submissions of Sri Sandeep Reddy Sama, learned counsel for the petitioner. The proceeding sheet in this matter reflects that one Sri D.Jagadishwar Rao, learned counsel, offered to file vakalat for the respondent, but, later failed to file vakalt and enter appearance, but, however, filed a counter on behalf of the respondent, though not holding vakalat for the respondent. What is to be noted is, that after hearing the learned counsel for the petitioner, on 28.08.2017, the matter is adjourned to today for continuation of hearing so that the respondent may avail the opportunity of entering appearance and contesting the matter. However, there is no representation for the respondent on this day also. I have perused the material record.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: "The plaintiff brought the suit against the defendant for mandatory injunction and other reliefs. The plaintiff also annexed a schedule to the plaint showing the details of the suit

property. The defendant filed a written statement and is resisting the suit. During the pendency of the suit, the defendant filed the aforementioned Interlocutory Application requesting to condone the delay and to grant leave to file CD, photographs, and the documents received from Nagar Panchayat, Badangpet, under covering letter, dated 06.7.2016, besides copies of representation, dated 17.11.2014, submitted by Udog Nagar Colony Welfare Association received from Nagarapanchayat, Badangpet. The said petition was resisted by the plaintiff by filing a counter. On merits and by the order impugned in this revision, the trial court partly allowed the petition of the defendant and received photographs and other documents on file subject to proof and relevancy. Aggrieved thereof, the defendant is before this Court.

5. Learned counsel for the petitioner/defendant would submit as follows:

“The plaintiff alleged that the defendant and his family members intentionally placed branches of trees in front of the gate to obstruct the use of the same. But, *in fact*, there is a Badam Tree at the house of the plaintiff; and, its branches have broken due to hailstorm and fell in front of the gate of the defendant’s house and also on the motor cycle that was parked there. The defendant’s family members have moved the said branches to facilitate the use of their gates and the said acts are recorded by the defendant in the form of a CD and the said CD is filed into Court along with the petition to grant leave to file the same to establish the contentions of the defendant. In the CD the encroachment made by the plaintiff into the plot of the defendant and the illegal opening of gates by PWs.2 and 3 is also recorded. Therefore, the CD and photographs clearly establish the illegal acts of PWs.2 and 3. Since the constructions are made by the plaintiff in violation of the sanctioned plan and as Nagarpanchayat, Badangpet, initiated action against her,

the defendant applied for documents from the said panchayat office under the provisions of the RTI Act. Accordingly, the authority of the said panchayat issued copies of relevant documents under covering letter, dated 06.07.2017, and the said documents are, therefore, filed along with the petition to grant leave to file documents. A copy of representation, dated 17.11.2014, submitted to Nagarpanchayat is also obtained by having resort to the provisions of RTI Act. The said documents are also filed along with the petition to grant leave. The said documents are necessary to prove the defence. The trial court instead of allowing the petition, as prayed for, partly allowed the petition. From the order of the trial court, it appears that the CD is not received on file as the plaintiff raised an objection that there is no certificate accompanying the CD as per the requirement of law and as the said certificate produced by the defendant was obtained after the objection is raised by the plaintiff. The trial court was in error in not receiving the CD, as the defendant is obligated under law to produce the Certificate at any stage and even prior to tendering the documents in evidence for bring marked. There is no requirement that the certificate should invariably be filed along with the CD as the law permits the certificate to be filed even at a later stage also.”

6. As noted, no submissions are made on behalf of the respondent and, *in fact*, respondent had not entered appearance. However, before the trial Court the respondent filed a counter and stated *inter alia* as follows:

“The recordings in the CD are incorrect. The contentions raised in the affidavit filed in support of the petition of the defendant are false and invented. In order to get over the depositions of PWs.2 and 3, the CD, photographs and other documents are filed. The documents do

not help the defendant in advancing the defence. Hence, the petition is liable to be dismissed.”

7. I have given earnest consideration to the facts and submissions. The trial Court having found that there are sufficient grounds to grant leave to the defendant to file some of the documents, allowed the petition in part and granted leave to file some of the documents and, as could be gathered from the order impugned, indeed received all the other documents on file except the CD. Nonetheless, the CD was not received on file for the only reason that the certificate in regard to the CD was obtained and filed after the objections are raised by the respondent/plaintiff.

8. In the well considered view of this Court, the ground on which the CD is not received on file is untenable. As per the settled legal position, the Certificate envisaged under law in respect of electronic evidence can be produced at any point of time, that is, even at the time of tendering the same in evidence for being marked. In the case on hand, the Certificate is produced even before it is tendered in evidence for being marked. In that view of the matter, the trial court ought to have allowed the petition as prayed for and received all the documents on file including the CD.

9. Viewed thus, this Court finds that the order insofar as partly dismissing the application and not receiving all the documents on file is unsustainable and is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed and the order impugned, insofar it is assailed in this revision, is set aside and the application in I.A.No.807 of 2016 in O.S.No.691 of 2015 filed by the defendant for granting leave to file documents is allowed, as prayed for,

making it clear that the CD is also received on file along with the certificate subject to proof, admissibility, and relevancy. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

August 28, 2017
Lm v

