

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.742 OF 2017

DATED:17-02-2017

Between:

Gujjari Diva Prasad

... Petitioner

And

Bulusu Vidya Sagar
and others

... Respondents

COUNSEL FOR THE PETITIONER: Sri S.V.R. Subrahmanyam

COUNSEL FOR THE RESPONDENTS: -



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition arises out of order dt.02.12.2016 in I.A. No.779 of 2016 in O.S. No.319 of 2007 on the file of the Additional Senior Civil Judge, Gajuwaka.

I have heard Mr. S.V.R. Subrahmanyam, learned counsel for the petitioner.

The petitioner filed the above mentioned suit for specific performance of Ex.A.1 – agreement of sale dt.19.11.2004. Initially defendant No.3 remained *ex parte*. Defendant No.4 filed a written statement wherein he has denied the genuineness of the said document. However, after the order setting defendant No.3 *ex parte* is set aside, she has filed a written statement wherein she has raised a plea that Ex.A.1 is a rank forged document. After filing the written statement, defendant No.3 died and thereafter respondent No.1 – defendant No.4 filed the aforementioned application for sending the suit document for expert's opinion. By the time this application was filed, the trial was completed and the arguments on the side of the plaintiff were also completed. After considering all the aforementioned facts, the lower Court observed that though the application was filed at the fag end of the suit proceedings, in order to decide the issue once and for all in the interests of justice the said document needs to be sent for expert's opinion.

The learned counsel for the petitioner has placed reliance on the judgment of this Court in *Nalnaru Shanmugam v. Nalnaru Narayanaiah*¹ to buttress his submission that the application filed for sending a disputed document for expert's opinion belatedly, when a plea regarding the

¹ 2013 (1) ALD 301

genuineness or otherwise of the document was raised in the written statement, is liable to be dismissed.

No doubt, the facts in *Nalnaru Shanmugam* (1 supra) appear to be identical to the facts of the present case, except to the extent that defendant No.3 who allegedly executed the suit agreement died after the written statement was filed, and during her life time, defendant No.4 has not taken steps to send the suit document for expert's opinion. Certainly, in matters of this nature, the High Court exercising its revisional jurisdiction does not lay down any hard and fast rule and ordinarily it does not interfere with the discretionary orders of the lower Courts except where such discretion is exercised contrary to the statutory provisions or the exercise of such discretion results in failure of justice. No doubt, unduly liberal approach by the lower Courts at the fag end of the suit proceedings results in delay in adjudication, affecting rights of one party. In such cases, whether or not the orders shall be interfered by the High Court in exercise of its revisional jurisdiction depends upon the facts of each case.

In the instant case, the lower Court has passed order on 02.12.2016, the copy thereof was made ready on 31.12.2016 and the petitioner has filed the revision petition on 03.02.2017. Thus, nearly 5 weeks had elapsed before the petitioner approached this Court by way of this revision petition and nearly 2½ months had elapsed from the date of passing of the order. In all probability, the process of opinion being sent to the Court by the expert must have already begun. Even though the respondents were not diligent in filing the application for sending the suit document for expert's opinion, exercise of discretion by the lower Court does not affect the interests of the petitioner, for, having filed the suit,

the burden lies on him to prove the genuineness or otherwise of the suit document. Indeed, the petitioner himself ought to have filed such application to prove the genuineness of the document. Therefore, the order of the lower Court one way works advantageous to the interests of the petitioner as, if the suit document is genuine, the expert's opinion will help him in succeeding in the suit.

In the light of the above facts and circumstances of the case, interference with the order of the lower Court is declined and the civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.964 of 2017 shall stand disposed of as infructuous.

17-02-2017

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C.V. NAGARJUNA REDDY, J

