

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3172 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.164 of 2017 in R.A.No.97 of 2014 dated 13.04.2017 passed by the Chief Judge, Small Causes Court, Hyderabad, whereby, the Appellate Court dismissed the application filed under Order VI Rule 17 C.P.C.

The petitioner filed I.A.No.164 of 2017 under Order VI Rule 17 C.P.C seeking leave to amendment of the counter appropriately filed in R.C.No.117 of 2012, disclosing the door numbers of the shop numbers which are vacant, as specific door numbers of the property were not available on the date of filing the petition and ultimately found that the shop bearing nos.21-2-67, 21-2-68 and 21-2-65/1 were found vacant and sought leave of the Appellate Court to amend the counter in R.C.No.117 of 2012.

The respondents filed counter denying the material allegations, *inter alia*, contending in paragraph 3 of the counter that, the respondents purchased premises 21-2-65, 21-2-65/1, 21-2-66, 21-2-67, 21-2-68 and 21-2-69 admeasuring 704 sq.yds situated at Machli Kaman, Hyderabad under a registered sale deed dated 04.01.2012. The respondents stated in the counter affidavit that premises No.21-2-65 is a residential building and there are five mulgies attached to the said premises and that the residential premises is more than 100 years old and is in dilapidated condition. It is also submitted that the five mulgies were in possession of the tenants at the time of purchase and after

purchase, the tenant in occupation of the mulgi No.21-2-69 purchased the mulgi from the respondents, while mulgi No.21-2-67 was in possession of tenant by name M.A. Aziz and others. As the premises was required for personal occupation of respondents, eviction petition bearing R.C.No.82 of 2012 was filed on the ground of wilful default and bonafide requirement. The Rent Controller, after appreciation of the entire evidence, concluded that there are no bonafides in the contention raised by the petitioner herein and ordered eviction of the petitioner from the schedule premises.

The Trial Court, upon hearing arguments of the both the counsel, dismissed the petition recording a specific finding in paragraph 5 which reads as follows:

“Admittedly, the said RC 117/12 has been disposed of and the facts which the petitioners wants to be amended in the counter of RC 117/12 has come to the notice of the peititioner subsequent to the disposal of that RC which means that the fact which they are seeking to be amended in his counter in RC 117/2012 was not to his knowledge during the period in which they filed a counter in the said RC and also held trial.”

In fact, the respondents never admitted about lack of knowledge regarding the door numbers. But the Appellate Court in casual manner recorded such finding, despite specific denial by the respondents in the counter affidavit. If, for any reason, the finding recorded by the Appellate Court extracted above is in accordance with the facts, the Appellate Court would have allowed the application. But, contrary to that, the Appellate Court dismissed the application without assigning any reasons. Therefore, the order of dismissal of I.A.no.164 of 2017 under Order VI Rule 17 C.P.C is bereft of any reasoning. However, in the petition, the petitioner

explained that he could not bring to the notice of the Court by amending the pleadings despite due diligence.

More curiously, the examination-in-chief and cross-examination of R.W.1 discloses the door numbers of the mulgis. Therefore, he gained knowledge even before passing order by the Rent Controller in R.C.No.117 of 2012, but, he did not take any steps.

However, it is brought to the notice of this Court by the learned counsel for the respondents that the appeal was heard by the Appellate Court i.e. by Chief Judge, City Small Causes Court at Hyderabad and the petitioner also filed his written arguments before the Appellate Court. That apart, copy application was filed after concluding the arguments and filed the present petition. Learned counsel contended that the delay itself shows that the petitioner is not diligent in prosecuting the proceedings. But, that cannot be a ground at this stage, since the order passed by the Appellate Court is bereft of any reasoning and it appears from the order of the Appellate Court dispensed with the process of reasoning without any basis and passed the impugned order under challenge.

This Court under Article 227 of the Constitution of India can exercise its power of superintendence and judicial power of review over the subordinate courts to keep them within the jurisdictional limits. But here, in this case, the order passed by the Appellate Court is without any reasoning and it is liable to be set-aside. Accordingly, the order in I.A.No.164 of 2017 in R.A.No.97 of 2014 dated 13.04.2017 passed by the Chief Judge, Small Causes Court,

Hyderabad, is set-aside and the Appellate Court is directed to restore the application to its original file and decide the same, assigning specific reasons for arriving any conclusion, in accordance with law, within two weeks from the date of receipt of copy of this order.

With the above direction, the civil revision petition is allowed.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:19.07.2017

SP

Note: Issue copy by 20.07.2017

b/o

SP

