

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.733 of 2017

ORDER:

Heard both sides and perused the grounds urged in the revision and the impugned order of the lower Court in I.A.No.485 of 2016.

No doubt the lower Court assigned the reasons for closing the evidence of defendants since his chief examination affidavit was filed after closure of plaintiff's evidence dated 18.07.2014 on 22.08.2014. The document petition of the defendant was ended in dismissal on 01.12.2014 because the so called purported documents are not containing the legal requirements to call as public documents within the meaning of Section 74 with reference to Section 76 to receive and admit under Section 77 of Indian Evidence Act (for short 'the Act'). Once such is the case, the remedy of the defendant after the dismissal of the document receive petition is to take back un-filed document and duly cause certified the requirements of Section 76 of the Act and resubmit with petition. He did not choose to do so and again filed I.A.No.21 of 2015 on 05.02.2015, that was also allowed where these documents not received back and cause rectify the defect pointed out much less filed along with the petition. Even after some documents filed were allowed on 04.11.2015 in I.A.No.21 of 2015 under the guise of summoning the original revenue record from filing a petition that was even allowed on 22.02.2016 in I.A.No.35 of 2016, defendant did not pursue further and it is only ultimately the original record not traced to produce the record sought for under Rule 129 of Civil Rules of Practice. It is

therefrom the Court closed the defendant's evidence and dismissed the reopen petition referred supra for taking defendant's evidence.

Undisputedly from the record, but for the chief examination of DW.1, after the evidence of PWs.1 to 3, that was treated with no value and there is no evidence in support of the valuable defence of the defendants. The ill advice to the defendant caused the entire myth in taking long life to the litigation for nearly 3 years instead of taking back the documents to comply with requirements under Section 76 in asking to receive as public document. However, that is not end all for dismissing the petition to take away valuable defence of the defendant by shunning their evidence though there are latches as referred supra.

Having regard to the above, the revision is allowed in part by setting aside the impugned dismissal order by permitting the defendant's evidence to complete within one month from the date of receipt of this order, which is subject to costs of Rs.3,000/- payable by the defendant to the plaintiff before the trial Court. The defendants are at liberty by virtue of this order to take back the documents filed earlier by them since the document petition was dismissed as document is not in compliance with the requirement of Section 76, as public document under Section 74 of the Act and resubmit after the certification contemplated with fresh petition to receive and this will not give life to the litigation much less extend the period, but for if at all choose to comply eagerly.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 04.12.2017

Note: Issue C.C. by 06.12.2017

(B/o)

ska

