

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**
+ CIVIL REVISION PETITION No.4172 OF 2016

% **7th April, 2017**

Thimmareddy Leelavathamma

... Petitioner..

AND

\$ M/s Raka Impex Private Limited an another

... Respondents

! Counsel for the Petitioner

: V. Sudhakar Reddy

^ Counsel for the 1st respondent

: Sri P. Sridhar Reddy

^ Counsel for the 2nd respondent

: Sri N.C. Das

< Gist:

> Head Note:

? Cases referred:



HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4172 OF 2016

ORDER:

The order dated 22.08.2016, in I.A.No.629 of 2016 in O.S.No.30 of 2004, passed by the learned Senior Civil Judge, Gudur, in dismissing the application made by the petitioner, invoking Order VII Rule 14(3) read with 151 of Code of Civil Procedure, 1908 (in short "CPC") seeking leave of the Court to file a set of documents, is challenged in this Civil Revision Petition.

The petitioner is the plaintiff, who filed a suit seeking specific performance of an agreement of sale, dated 09.03.2001, alleged to have been executed by the defendant company, being represented by the then Managing Director one Sri P.K. Ramesh Narayana. Originally, the suit was filed against the defendant company represented by one Sri P.K. Rangaramanujam. Subsequently, 2nd respondent was added as a party. Sometime in August, 2016 petitioner filed I.A.No.629 of 2016 with a prayer to –

- a) Condone the delay in filing the documents mentioned in the list and they may be marked as exhibits on behalf of the petitioner.
- b)
- c)

In the affidavit filed in support of the said Interlocutory Application, petitioner had stated as follows:

"I filed the above said suit for specific performance of agreement of sale basing on the sale agreement dated 09.03.2001 executed by the defendants company being represented by the then Managing Director P.K. Ramesh Narayana. I was examined as PW-1 and got marked Ex.A1 to A11 on my behalf. In the cross examination the 2nd defendant did not

speak about the dismissal of the interim injunction application in the suit filed by him and pleaded ignorance of the same. The Resolution copy dated 07.03.2010¹ was returned by the Hon'ble Court along with another document. To prove the possession and enjoyment of the schedule mentioned land by the subsequent purchaser I have obtained true copies of adangals and 1 B register in their favour along with true copies of title deed and pattadar pass books. I am advised to file those documents to prove my case. I have sent the original agreement of sale for impounding and the orders impounding the said document is also obtained recently. Unless the said original agreement of sale is marked I cannot succeed in this case. These documents were obtained recently and further as the respondents have denied the possession it is just and necessary to file those documents to prove my case."

Counters were filed by the respondents 1 and 2 opposing the Interlocutory Application.

The Court after an elaborate order dated 22.08.2016 dismissed the I.A.No.629 of 2016 in O.S.No.30 of 2004.

Learned counsel for the petitioner, Sri V. Subdhakar Reddy, in his usual persuasive style diligently submits that the plaintiff filed the suit for specific performance and the same was decreed *ex parte* on 29.04.2004 and a sale deed was also executed by the Court on 07.07.2006. Sole defendant filed I.A.No.49 of 2007 under Section 5 of Limitation Act to condone the delay of 970 days and also filed petition under Order IX Rule 13 CPC seeking to set aside the *ex parte* decree, which was dismissed on 31.05.2008. However, the said order was set aside by this Court on 25.10.2010 by allowing the C.R.P.No.3434 of 2008 filed by the defendant.

Consequently, on 04.04.2013, I.A.No.102 of 2011, filed under Order IX Rule 13 CPC, was allowed on condition of petitioner paying Rs.1,000/ as costs and as the costs were not paid the I.A. stands dismissed on 09.12.2014 and thereafter the same was restored by condoning the delay of 73 days. The said order was challenged before this Court in C.R.P.No.1096 of 2016, which came to be dismissed on 06.04.2016 with a direction to complete the trial on or before 31.08.2016. Learned counsel further contends that I.A.Nos.627 and 628 of 2016 were filed seeking to reopen of the suit and recall the P.W.1 for marking of documents and to give further evidence, were allowed on 22.08.2016 but the learned Senior Civil Judge erroneously dismissed the I.A.No.629 of 2016 filed under Order VII Rule 14(3) read with Section 151 of CPC, seeking permission to file the list of documents mentioned in the I.A. application. Learned counsel pleads that the delay, if any, in conducting the suit is only on account of the negligence on the part of the defendants and the documents, which have been listed, are all essential and relevant to support the case of the plaintiff-petitioner. While document No.1 is extract of Board Resolution dt.07.03.2001 of the defendant company, document No.2 is certified copy of the order in I.A.No.130 of 2007 in O.S.No.28 of 2007, and the documents 3 to 14 are all copies of the documents issued by the revenue authorities. He would submit that the trial Judge having allowed I.A.Nos.627 and 628 of 2016 permitting the petitioner to recall and mark certain documents, ought to have allowed I.A.No.629 of 2016 as well even putting the petitioner on some terms, as they are very much relevant, particularly the copy of the Board Resolution, which would go to support the plaintiff's

case with regard to the fact that the respondent's company Board has resolved to sell the suit schedule land to the petitioner. In those circumstances, learned counsel pleads for allowing of the Civil Revision Petition.

On the other hand, Sri N.C. Das, learned counsel appearing for the 2nd respondent and Sri P. Sridhar Reddy, learned counsel appearing for the 1st respondent, vehemently oppose any order being passed in Civil Revision Petition. Both the learned counsel submit that there is no diligence on the part of the petitioner right from the beginning and the suit filed is a speculative suit and there is no such thing as condoning the delay in filing of the documents. The petitioner did not pray for seeking the leave of the Court setting out the reasons why and in what circumstances the petitioner failed to file these documents either along with the plaint or at the earliest point of time.

Having heard the respective parties and having perused the order the question which falls for consideration before this court is "Whether the Order passed by the learned Senior Civil Judge, Gudur, is valid, legal and in order?"

It may be noticed that from the extracted portion of the affidavit the only reason stated by the petitioner in support of the I.A. is that "these documents were obtained recently and further as the respondents have denied his possession it is just and necessary to file those documents to prove my case". While the petitioner states that the documents were obtained recently, the affidavit is silent with respect to the reasons why the petitioner could not obtain the said documents at the earliest point of time, if

not before filing the suit to annex along with the plaint. It may be noted that the petitioner had pleaded in the plaint itself that the petitioner had been delivered possession of the land. The alleged Board Resolution is dated 07.03.2001 and the certified copy of the order in I.A.No.130 of 2007 in O.S.No.28 of 2007, is dated 16.02.2009 and the revenue documents, which have been filed by the petitioner, probably sought to be filed to support the said contention. The revenue documents correspondents to 2010, 2012 and 2016 and the order in I.A.No.130 of 2007 is dated 16.02.2009. There is no explanation why these documents were not filed at earlier point of time. So far as the alleged Board resolution is dated 07.03.2001 and the suit is filed in the year 2004. There is no explanation why the alleged Board resolution was not filed along with the suit. The case on hand is required to be considered in terms of Order VII Rule 14 of C.P.C. Order VII Rule 14 of CPC reads as under:

“14. Production of document on which plaintiff sues or relies:-

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such document in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.;

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.

Order VII Rule 14 of CPC mandate an obligation and duty on the plaintiff to enclose list of documents, on which basis the plaintiff sues or relies upon, and produce the same into the court along with the plaint. Order XIV Rule 2 of CPC puts an obligation on the plaintiff to state in the plaint with respect to the documents which are not in possession of the plaintiff and also to state in whose possession such documents are available. Order VII Rule 14 (3) of CPC gives a limited discretion to the Court to grant leave and allow the plaintiff why such documents could not be presented or not entered in the list or annexed to the plaint. Order XIV of CPC came to be allowed by Act 46 of 1999, with effect from 01.07.2002.

As stated supra, there is absolutely no explanation forthcoming from the petitioner to make an exception from compliance with Order XIV Rule 1 and 2 of C.P.C. It is also not the case of the petitioner that, as a matter of fact, petitioner had at least mentioned about the Board resolution in the list of documents annexed to the plaint, which documents learned counsel fervently pleads to be of great importance to the petitioner's case.

It may also be noted that though the learned Senior Civil Judge had allowed the I.A.Nos.627 and 628 of 2016 the said I.A.s were allowed only for very limited purpose. The order reads as under:

I.A.No.627 of 2016 in O.S.No.30 of 2004

1. that the application be and the same is hereby allowed for reopening the petitioner's evidence for the purpose of recalling PW1 and to mark agreement of sale and Aadhar card in original if produced by the petitioner;
2. that the application for marking rest of the documents is hereby dismissed; and
3. that there be no order as to costs.

I.A.No.628 of 2016 in O.S.No.30 of 2004

1. that the application be and the same is hereby allowed and PW 1 is recalled for marking agreement of sale and Aadhar card in original if produced by the petitioner and for cross-examination on those documents;
2. that the application with respect to the recall for marking rest of the documents is hereby dismissed; and
3. that there be no order as to costs.

In that view of the matter, allowing of the above I.As cannot have any bearing on the dismissal of I.A.No.629 of 2016 in O.S.No.30 of 2004 by the learned Senior Civil Judge, Gudur.

In the facts and circumstances of the case, there being no justification for allowing the prayer of the petitioner, the order dated 22.08.2016, in dismissing the I.A.No.629 of 2016 in O.S.No.30 of 2004, by the Court below cannot be found fault and there being no error of jurisdiction or error in exercise of jurisdiction of the power, the order in I.A. does not call for any interference.

Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

CHALLA KODANDA RAM, J

Date:21.04.2017.
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