

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4679 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/appellant, assailing the order, dated 03.07.2017, of the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad, passed in I.A.No.67 of 2013 in A.S.No.56 of 2010.

2. I have heard the submissions of Sri *Srinivas Bazar*, learned counsel for the petitioner.

3. Having regard to the facts and circumstances of the case, this Court is of the considered view that this Revision can be disposed of at the stage of admission, without ordering notices to the respondents.

4. It is necessary to state, *infra*, the necessary facts:

Having been aggrieved of the decree and judgment of the trial Court in O.S.No.521 of 2007, the petitioner/defendant preferred the afore-stated appeal. In the said appeal, the petitioner/defendant also filed the afore-stated interlocutory application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, requesting for permission to adduce additional documentary evidence. On merits and by the order impugned in this Revision, the 1st appellate Court dismissed the said application. Therefore, the appellant/defendant is before this Court.

5. In the stated background of facts and the legal position obtaining, this Revision Petition need not detain this Court for long. The law is now well settled that any application filed for receiving additional evidence in a first appeal suit shall be heard and considered for disposal along with the first appeal suit, but shall not be decided ahead of the first appeal suit. However, the Court below keeping the first appeal suit pending and without taking up the first appeal suit for Final Hearing had taken up, for disposal, the subject interlocutory application filed by the appellant for permission to adduce additional documentary evidence and had dismissed the said application. Thus, the Court below had taken up and disposed of the application filed by the appellant for permission to adduce additional evidence ahead of the final hearing of the first appeal suit.

6. It is profitable to refer to the decision in *Union of India v. Ibrahim Uddin and another*¹, wherein the observations and the ratio are as follows:

“The general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 of the Code of Civil Procedure enables the appellate Court to take additional evidence in exceptional circumstances. It is also true that the appellate Court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right to the admission of such evidence. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the rule itself. Under Order XLI Rule 27, the appellate Court has power to allow a document to be produced and a witness to be examined. But the requirement

¹ (2012) 8 SCC 148

of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. It is a salutary provision which operates as a check against a too easy reception of evidence at a later stage of litigation and the statement of reasons may inspire confidence and disarm objection.”

“An application under Order XXI Rule 27 of the Code is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause.”

In *Arjan Singh v. Kartar Singh and Ors.* (supra), this Court held:

... If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent... The order allowing the Appellant to call the additional evidence is dated 17.8.1942. The appeal was heard on 24.4.1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing the judgment

Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/in executable and is liable to be ignored.

7. Thus, from the ratio in the cited decision, it is clear that in case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored. Therefore, in the case on hand, the impugned order, whereby the application for taking additional evidence on record has been considered and dismissed prior to hearing of the first appeal, is a product of total and complete non-application of mind and such order, which remains inconsequential and inexecutable, is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the order impugned in the Revision is set aside. Since the subject interlocutory application to be considered on merits, at the time of final hearing of the appeal, the said application is remitted to the Court below for fresh consideration on merits in accordance with the precedential guidance in the decision of the Supreme Court referred to supra. It is made clear that this Court did not express any opinion on the merits of the said application. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. Seetharama Murthi, J

12th September, 2017

Note:-

Issue C.C. by 10.10.2017
(B/O) Bvv