

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NOs. 6488, 6489, 6490 and 6545 OF 2016

COMMONORDER:

These petitions are filed under Article 227 of the Constitution of India, challenging the orders in I.A.Nos.70, 72, 63 & 71 of 2016 respectively in O.S.No.2350 of 2012 dated 28.11.2016 passed by the XIX Junior Civil Judge, City Civil Court at Hyderabad, dismissing the applications filed under Order VI Rule 17, Order XIV Rule 5, Order VIII Rule 1-A(3) and Order XVIII Rule 17 C.P.C.

The petitioners filed I.A.Nos.70, 72, 63 & 71 of 2016 before the Trial Court under different provisions stated above. But the affidavit filed by the petitioners and counter filed by the respondent is common in all the cases. Therefore, I find that it is expedient to decide all the petitions by a common order.

The petitioners filed I.A.Nos.70, 72, 63 & 71 of 2016 alleging that the respondent filed suit for injunction simplicitor on the strength of the lease deed dated 17.03.2011, purported to have been executed in favour of the petitioners in respect of the suit schedule property (Grand Festival Palace Functional Hall) situated at Madannapet, Saidabad, Hyderabad. The respondent also contended in the suit that the petitioners borrowed an amount of Rs.10,65,000/- from him, and in lieu of discharge of debt, the petitioners allegedly executed lease deed and got it registered, so as to appropriate the amount borrowed towards rent for a period of 18 years.

The petitioners filed a common written statement and denied the very execution of the lease deed contending that the suit schedule property was offered by them as a collateral security to Indian Overseas Bank, Koti Branch, Hyderabad, for loan of Rs.2,95,00,000/- obtained by M/s Parimala Project Facotry, the principal debtor and as the principal debtor committed default in payment of instalments, the bank invoked the provision of SARFAESI Act and brought the suit schedule property for auction. To avoid loss in the event of sale, the petitioners paid substantial amount and approached Debts Recovery Tribunal in S.A.No.263 of 2011 and got conditional stay of delivery of possession and accordingly paid Rs.75,00,000/- in compliance with the conditional order and continued in possession of suit property, as lease deed was executed nominally. Later, the petitioners discharged the entire debt due to the bank. Thereupon, the bank, instead of returning the lease deed, got it registered by making false representation and taking the petitioners signatures on blank papers, that the alleged lease deed is therefore void. Further, the respondent is enjoying the suit schedule property illegally. Thus, the petitioners denied the very execution of the registered lease deed.

The respondent filed W.P.No. 27225 of 2015 against the bank and the petitioners, challenging the action of the bank in proceeding to recover possession of suit schedule property as well as auction of the suit property referred in the lease deed dated 17.03.2011. The Division Bench of this Court in W.P.No.27225 of 2015 considered the legality of the lease deed, vide order dated 02.11.2015 and dismissed the writ petition holding that the lease

is invalid and the order became final. Once the lease was held to be invalid by Superior Court and attained finality, the respondent is no longer entitled to contend that there is a valid lease between the petitioners and the respondent. Therefore, due to subsequent events, the petitioners sought to amend the written statement to bring to the notice of the Court by the subsequent events way of amendment to the pleading i.e. subsequent to dismissal of W.P.No.27225 of 2015 dated 02.11.2015, invalidating the lease.

As the order in W.P.No.27225 of 2015 is subsequent to filing of written statement, the petitioners are entitled lease to amend the written statement and sought leave of the Trial Court to amend the written statement filed by the petitioners.

It is also contended that, if the pleadings are amended, an additional issue is required to be framed under Order XIV Rule 5 C.P.C and requested to frame additional issue, try and decide the same, which would determine the right of the respondent herein totally.

To mark the judgment and other documents filed along with the petitions, the petitioners requested to reopen the evidence and recall D.W.1 for limited purpose of marking judgment copy in W.P.No.27225 of 2015 dated 02.11.2015 and other documents annexed to the list filed along with the petition.

The respondent filed counter affidavit in all the petitions with common allegations, denying material allegations of the affidavit filed along with the petition, *inter alia* contending that the applications are filed at belated stage. When the evidence of both the parties was closed and suit is coming up for hearing, at this stage, the petitioners cannot be permitted to amend the written

statement, in view of the bar under proviso to Order VI Rule 17 C.P.C, introduced by amendment Act 22 of 2002. Unless the petitioners explain that despite exercise of due diligence, the petitioners could not bring those facts to the notice of the Court by amending the written statement and thereby, allowing such amendment would frustrate the very intention of the Legislature. It is also contended that, filing of documents said to be in the list is contrary to the purport of Order VII Rule 1-A clauses 1,2 & 3 C.P.C, as none of the documents were not referred in the written statement and placing reliance on those documents which are required to be shown in the list or explained in whose possession they are available. Thereby, the documents filed along with the petition cannot be received and similarly, question of reopening and recalling D.W.1 does not arise and prayed for dismissal of the petitions.

Upon hearing argument of both the counsel, the Trial Court dismissed all the applications on the ground that, at the stage of arguments, leave cannot be granted to amend the pleadings in the plaint, in view of the proviso to Order VI Rule 17 C.P.C and the documents which are not relied on, cannot be received at this stage and similarly, question of framing issue and recalling D.W.1 would not arise.

Aggrieved by the order passed by the Trial Court in all the I.A.Nos.70, 72, 63 & 71 of 2016, the present revisions are filed on the ground that disposal of W.P.No.27225 of 2015 dated 02.11.2015 is a subsequent event and thereby there is no possibility of placing reliance on the judgment on the date of filing of written statement would arise, since it is a subsequent event,

but should have been brought on record by amending the pleadings of the petitioners. Otherwise, there is no possibility to bring to the notice of this Court about the finding recorded in W.P.No.27225 of 2015 with regard to validity of the lease. But the Trial Court did not consider the same in proper perspective. It is also contended that when the amendment is permitted to be filed, an additional issue is required to be framed, since the petitioners affirmed a fact and denied by the other by filing an additional pleadings under Order VIII Rule 9 C.P.C, no prejudice would be caused.

On the other hand, it is contended that when the judgment copy was received subsequent to filing written statement, non-compliance of Sub-Rule 1 & 2 of Rule 1-A of Order VIII would not come in the way to receive the documents set out in the list by recalling D.W.1 for marking the documents. Therefore, the dismissal of I.A.Nos.70, 72, 63 & 71 of 2016 by the Trial Court is erroneous and prayed to set-aside the orders in I.A.Nos.70, 72, 63 & 71 of 2016 respectively in O.S.No.2350 of 2012 dated 28.11.2016 passed by the XIX Junior Civil Judge, City Civil Court at Hyderabad.

During hearing, learned counsel for the petitioners Sri Nanduri Srinivas mainly contended that, when a finding is already recorded by this Court in W.P.No.27225 of 2015 filed by the respondent herein, including the adverse findings regarding validity of lease deed, which is the basis for the claim of the respondent, the document is required to be marked to decide the real controversy between the parties and the bar under proviso under Order VI Rule 17 C.P.C will not come in the way of this

Court, as the order was passed on a later date of filing of written statement in the suit. Therefore, the petitioners, though exercised such due diligence, could not bring subsequent event to the notice of the Trial Court by amending their pleadings appropriately. Consequently, the petitions are liable to be allowed. When the petition under Order VI Rule 17 C.P.C is allowed, other petitions are also liable to be allowed, as a consequence of the order under Order VI Rule 17 C.P.C, enabling the Court to decide the real controversy effectively and prayed to allow all the civil revision petitions by exercising power under Article 227 of the Constitution of India.

Learned counsel for the respondent Sri Chetluri Srinivas supported the orders under challenge, while contending that, at the stage of arguments, the petitioners are not entitled to introduce an amendment seeking leave of this Court to amend the pleadings as most of the documents were not relied on referred in the list, annexed to the written statement filed by the petitioners. In such case, unless the petitioners prove compliance of Sub-Rule 2 of Rule 1-A of Order VIII, the petitioners are not entitled to mark the documents set out in the list and the Trial Court cannot receive such documents. Similarly, framing issues also does not arise in this matter at this stage. At best, if the Court finds that an issue is necessary, the Court may frame issues at any stage, even at the time of pronouncing the judgment and thereby, there is no illegality in the orders under challenge and prayed for dismissal of the civil revision petitions by affirming the common order in I.A.Nos.70, 72, 63 & 71 of 2016 in O.S.No.2350 of 2012 on the file of XIX Junior Civil Judge, City Civil Court at Hyderabad.

This civil revision petition is filed under Article 227 of the Constitution of India. Such jurisdiction can be exercised only in limited circumstances. Before deciding the real controversy in dispute, I would like to discuss about the jurisdiction of this court under Article 227 of the Constitution of India. This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T.**

Of Delhi) v. Navjot Sandhu@ Afsan Guru¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

- 1. Whether the proposed amendment to the written statement filed by the petitioners would change the nature of the plea raised in the written statement originally, takes away the valuable right that accrued to the respondent or withdraws the unequivocal admission made in written statement. If not, the petitioners are entitled to leave to amend the pleadings the written statement?***
- 2. Whether an additional issue is required to be framed by exercising power under Order XIV Rule 5 C.P.C, in the event of allowing amendment under Order VI Rule 17 C.P.C?***
- 3. Whether the documents set out in the list can be received, in the absence of compliance of Sub-Rule 2 of Rule 1(A) of Order VIII C.P.C?***
- 4. Whether D.W.1 be recalled to mark the documents set out in the list by exercising power under Order XVIII Rule 17 C.P.C?***

¹ (34)2005 (3) ALT (CrI.) 125 (SC)

P O I N T N O . 1 :

Undisputedly, the respondent filed suit for injunction simplicitor to restrain the petitioners herein from interfering with the peaceful possession and enjoyment of the suit schedule property based on the lease deed dated 07.03.2011 allegedly executed by the petitioners. Whereas, the petitioners contended that the lease deed was not executed in their favour and it is invalid, while contending that the documents were deposited in the Indian Overseas Bank, Koti Branch, Hyderabad and obtained loan for an amount of Rs.2,95,00,000/- by M/s Parimala Project Factory, principal borrower as a collateral security and thereafter, for failure of the principal borrower to discharge the debt, the Bank initiated proceedings under SARFAESI Act by issuing notice and taking possession of the suit schedule property. Thereupon, the petitioners filed S.A.No.2063 of 2011 before the Debts Recovery Tribunal and obtained a conditional stay and deposited Rs.75,00,000/- and later discharged the debt. Taking advantage of the documents with the bank, the documents were fabricated with the help of bank employees.

As the bank initiated proceedings under SARFAESI Act, the respondent herein filed W.P.No.27225 of 2015 against the petitioners and the bank, challenging the action of the bank in initiating the proceedings under SARFAESI Act. But, in the order dated 02.11.2015 in W.P.No.27225 of 2015, the Division Bench of this Court held that the lease is invalid. Therefore, filing of W.P.No.27225 of 2015 and its disposal is only after filing written statement by the petitioners in the suit and it is only a subsequent event. Thereby, absolutely there was no possibility to raise such

contention in the written statement, as no petition was filed and allowed by the date of filing written statement. In such case, a subsequent event after completion of pleadings in the suit can be brought on record only by invoking Order VI Rule 17 C.P.C and if such subsequent event is not allowed to be brought on record, it is difficult for the petitioners to prove their independent case. No doubt, proviso to Order VI Rule 17 C.P.C was introduced by Amendment Act 22 of 2002, creating an interdict that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. If the petitioners are able to establish that, despite exercise of due diligence, they could not amend their pleadings, the Court can grant leave. Thus, the bar under the proviso to Order VI Rule 17 C.P.C is not an absolute bar.

Here, in this case, W.P.No.27225 of 2015 was dismissed by this Court on 02.11.2015, whereas, the suit was filed much prior to filing of W.P.No.27225 of 2015 i.e. in the year 2012. The written statement was also filed by the date of filing the writ petition. In such case, question of raising such plea in the written statement would not arise. A subsequent event can be brought on record only by way of amendment under Order VI Rule 17, as held by the Apex in **Sampath Kumar v. Ayyakannu and Another**², **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Ors**³.and by this Court in **T. Venkata Ravamma and Ors. v. Karnati Lakshmamma and Ors**⁴,

² 2002 (7) SCC 559

³ 2009 (10) SCC 84

⁴ 2015 (5) ALT 184

Though W.P.No.27225 of 2015 was disposed of on 02.11.2015, the petitioners did not take steps to amend the pleadings appropriately, i.e. amend the pleadings within three months from the date of pronouncing the order in the writ petition after obtaining certified copy of the order. Thus, the petitioners exercised due diligence in prosecuting the proceedings and since it is a subsequent event, the bar under proviso to Order VI Rule 17 C.P.C would not come in the way of allowing such amendments which is crucial to decide the real controversy between the parties, as the respondent set up lease of property dated 17.03.2011 and the findings on the lease deed in the writ petition is binding on the respondent, as he was the petitioner in W.P.No.27225 of 2015. Therefore, dismissal of petition under Order VI Rule 17 C.P.C by the Trial Court is erroneous.

According to Rule 17 Order VI of C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the principles to allowing petitions under Rule 17 Order VI of C.P.C. are well settled. They are; the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment would not amount to withdrawing unequivocal admissions made in the pleadings. However, by proviso to Rule 17 of Order VI of C.P.C, an interdict is created to that, no application for amendment shall be allowed after the trial has commenced, unless the Court comes to

the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

The intention of the Legislature in incorporating Order VI Rule 17 C.P.C is to avoid multiplicity of litigations, permitting the parties to amend their pleadings appropriately.

The Court in **A. Krishna Rao v. A. Narahari Rao and others⁵**, while dealing with an application under Order VI Rule 17 of C.P.C., the Court held as follows:

"Rejection of petition under Order VI Rule 17 of C.P.C. on the ground that proposed amendment is inconsistent with original plea and petitioner cannot be permitted to raise such inconsistent plea is not justified. Amendment of pleading cannot be rejected even if proposed amendment has effect of raising conflict in plea. It is for the plaintiff to justify his pleadings and prove the same with reference to evidence. Since the procedure being handmaid of justice, a party cannot be deprived of his right to raise pleadings by way of amendment unless proposed amendment results in failure of justice."

Thus, in view of the principle laid down by the Court in the above judgment, the Court can permit amendments to avoid multiplicity of the proceedings.

The Court can exercise its discretion in view of the law declared by the Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others⁶**, wherein the Apex Court laid down certain guidelines for granting or denying relief under Order VI Rule 17 of CPC viz., as follows:

"On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

⁵ 2015 (1) ALT 113

⁶ 2009(8) SCJ 401

- 1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
 - 2) Whether the application for amendment is bona fide or mala fide?
 - 3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
 - 4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
 - (5) Whether the proposed amendment constitutionally or fundamentally nature and character of the case?
- And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

24. The Apex Court further held that,

"amendment application to be filed if necessary immediately after filing suit i.e. before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial commenced despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances."

Similarly, in **Rajkumar Guruwara²** case, the Apex Court laid down the following conditions to grant application for amendment subject to certain conditions:

- (i) when the nature of it is changed by permitting amendment;
- (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party;
- (iii) when allowing amendment application defeats the law of limitation.

In view of the law declared by the Apex Court in the judgments referred supra, I find that it is a fit case to grant leave to the petitioners to amend their pleadings to bring the subsequent events on record, by amending the pleadings as mentioned in the petition, since, the proposed amendment is subsequent and bar under proviso to Rule 17 of Order VI C.P.C, has no application. But the Trial Court dismissed the petition only based on the proviso to Order VI Rule 17 C.P.C and it is a belated application.

According to Order VI Rule 17 C.P.C the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Hence, the order of the Trial Court is contrary to the purport of Order VI Rule 17 C.P.C and the same is liable to be set-aside. Accordingly the order in I.A.No.70 of 2016 dated 28.11.2016 passed by the XIX Junior Civil Judge, City Civil Court at Hyderabad is set-aside, permitting the petitioners to amend their pleadings i.e. written statement in the plaint by incorporating specific paragraphs mentioned in the petition.

Accordingly, the point is answered.

P O I N T N O . 2 :

When leave is granted to the petitioners to amend their pleadings, the respondent is entitled to file additional pleadings by way of rejoinder under Order VIII Rule 9 C.P.C. If, the respondent denied the fact affirmed by the petitioners in their pleadings, the Court is required to frame an additional issue by exercising power under Order XIV Rule 5, as an affirmation of fact by one party and denial by another party to form the subject of a distinct issue. Therefore, dismissal of I.A.No.72 of 2016 on the ground that it is a belated application is of illegality and therefore, the order is set-aside, as the amendment petition is ordered. Accordingly the point is answered.

P O I N T N O . 3 :

The petitioner filed number of documents along with the petition under Order VIII Rule 1 C.P.C and requested to receive 24 documents. Document Nos.1,2,3 & 4 are copy of the order in W.P.No.27225 of 2015 dated 02.11.2015, counter affidavits filed by respondents 1,2 & 3 respectively in W.P.No.27225 of 2015. But the documents No.5 to 24 pertain to period prior to filing of written statement commencing from 01.04.2007 to 30.09.2014, these documents were neither relied on, nor referred in the written statement, as required under Order VIII Rule 1(A) C.P.C and if those documents are not available, they have to explain in whose possession they are available, as required under Sub-Rule 2. Therefore, filing of documents as and when the petitioners wake up is impermissible, in view of the bar under Sub-Rule 3.

Learned counsel for the petitioners placed reliance on judgments of this Court reported in **GPR Housing Private Limited, Hyderabad, rep. by its Managing director G. Punna Rao v. C. Prithvi Raj Reddy and others**⁷ wherein, in paragraphs 9 & 11, this Court held as follows:

“9. Another faulty reason, on which the lower Court has rejected the applications of the petitioner, is that since the suit is of the year 2006, the petitioner cannot be permitted to produce additional evidence at the belated stage after closure of the evidence. The lower Court has completely glossed over the pleading of the petitioner, raised in his affidavit filed in support of the three applications, that the necessity for it to produce the additional evidence had arisen on account of denial of receipt of money through cheques by DW. 3, in her cross-examination on 30-01-2014. As a matter of fact, the receipts allegedly passed on by DW. 3 evidencing this payment are marked as part of Ex. A.4. This shows that the petitioner was diligent in producing the required evidence to prove payments. However, as DW. 3 has specifically denied receipt of any money, the necessity for the petitioner to adduce further evidence appeared to have arisen.

11. Order VII Rule 14 of the Civil Procedure Code, 1908 enjoins upon the plaintiff to enter all documents, upon which he relies in a list, and produce them in the Court when the plaint is presented. However, Sub-Rule (3) thereof vests power in the Court to grant leave to file the documents at a later stage but such power has to be exercised only upon the party satisfying the Court that, for convincing reasons, those documents could not be filed earlier. There can be no hard and fast rule for the Court to exercise discretion while granting leave under Sub Rule (3) of Rule 14. The Courts must always exercise sound discretion while dealing with the applications for leave to file additional material. Mere delay by itself would not constitute the sole ground for rejecting the leave. If the facts and circumstances of the case justify non-filing of the documents at an earlier stage, the Court will not reject the application for leave only on the ground of delay. In the ultimate analysis, the endeavour of the Court must always be to decide the real controversy in issue. If the material sought to be produced has relevance on the issues involved in the suit and helps the Court to determine the issues properly and effectually, the Court must exercise its discretion in favour of allowing such evidence.”

⁷ 2015 (1) ALD 330

In **M.R. Anjaneyulu, S/o. Ramappa vs. R. Subramanyam Achary, S/o. Rajachari**⁸, the same single Judge of this Court in paragraph 5 of the judgment held as follows:

“5. Clause (3) of Order VIII Rule 1A CPC was incorporated by Act 22 of 2002 with a view to discourage the practice of the parties filing documents at a belated stage of the proceedings. The law is well settled that procedure is handmaid of justice. While procedural laws need to be adhered to in order to avoid long delays in disposal of the cases, at the same time, the Courts will have to make a delicate balance between strict adherence to these procedural laws and the substantial justice that needs to be ensured for the parties. In the anxiety to curb delays, stopping the parties from adducing relevant evidence would lead to failure of justice. However, fair amount of discretion is vested by Order VIII Rule 1A (3) CPC in the Courts to permit filing the documents. No hard and fast principles can be laid down for the Courts as to how this discretion has to be exercised. While exercising such discretion, the Courts will have to consider relevant aspects such as the conduct of the parties, the nature of the documents that are sought to be filed and whether by permitting filing such documents, the same will help the Court to adjudicate the suit in a more effective manner etc. The Court should also consider the stage at which the documents are sought to be filed.”

This Court in **Jai Siha v. Deewan Ranveer Singh and another**⁹ and **Voruganti Narayana Raon S/o Pullaiah v. Bodla Rammurthy S/o Venkata Narayana**¹⁰ held as follows:

“Rules 1-A and 1-A(3) of Order VIII Code of Civil Procedure, were substituted by Act 46 of 1999 with effect from 01.07.2002. The object with which those Rules were amended was to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the civil court. The Parliament has though it fit to stipulate time limits for the parties to file their defense and produce the documents along with the defense so that the cases can be disposed of without avoidable delays. This being the avowed object with which the above noted provisions are amended, Rule 1-A(3) of Order VIII Code of Civil Procedure, which on a literal interpretation appears to vest unlimited discretion with the Court, requires to be the defendant produced the said documents after filing of the written statement, therefore, needs to be circumspect in examining whether proper reasons are assigned by the defendant for not producing the documents along with the written statement. Unless the reasons assigned by the defendant discloses sufficient cause for his failure to produce the documents within the

⁸ 2012 (5) ALD 243

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¹⁰ 2011 (6) ALD 142

time stipulated in Rule 1-A of Order VIII Code of Civil Procedure, the Court shall not permit the defendant to file such documents later. Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended. This Court in **Ravi Satish v. Edala Durga Prasad [2009 (3) ALT 236]** held that grant of leave by the Court is not for the mere asking nor is the Court a mere post-office to receive documents even in the absence of any reasons furnished for failure to file the said documents along with the written statement.”

Applying the law laid down by the Court to the present facts, in the absence of any explanation offered for failure to file documents, the Court shall reject the applications filed for leave to receive additional evidence, on the ground of delay. Therefore, the consistent view of this Court is that, delay alone by itself is not a ground to reject the applications, but subject to satisfying the Court by mentioning the reason for failure of the petitioners to file the documents as required under Order VIII Rule 1-A C.P.C, the Court can receive the documents if they are necessary to decide the real controversy.

But, in the present case, except explaining the reason for non-filing of document nos. 1 to 4, no reason was assigned by the petitioners for their failure to file the document nos.5 to 24. Therefore, in the absence of any explanation offered by the petitioners for their failure to file documents, the Court cannot receive the documents set out in the list, except document nos. 1 to 4. Consequently, I find that dismissal of an application filed by the petitioners in the Trial Court on the ground of delay is erroneous partly. However, the order of Trial Court declining to receive the documents from serial nos.5 to 24 cannot be faulted, as they were neither referred nor relied on in the written statement which were mentioned in the list of documents filed along with the pleadings. Hence, I find that it is a fit case to receive documents

from serial nos.1 to 4, in the list while declining to receive documents from serial nos.5 to 24.

Accordingly the point is answered.

P O I N T N O . 4 :

As, I.A.Nos. 70 and 72 of 2016 are allowed, DW-1 is required to recall for limited purpose of marking the documents received by the Court in serial nos.1 to 4 by exercising power under XVIII Rule 17 C.P.C. Accordingly, I.A.No.71 of 2016 is allowed for limited purpose of marking documents from serial nos.1 to 4 filed under Order VIII Rule 17 C.P.C.

Accordingly, the point is answered.

In the result, all the civil revision petitions are allowed, setting aside the orders in I.A.Nos.70, 72, 63 & 71 of 2016 respectively in O.S.No.2350 of 2012 dated 28.11.2016 passed by the XIX Junior Civil Judge, City Civil Court at Hyderabad

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

JUSTICE M. SATYANARAYANA MURTHY

Date:04.07.2017

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