HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.4897 OF 2016

ORDER:

Heard Mr.Virupaksha Dattatreya Gouda for petitioners and Mr.A.Tulsi Raj Gokul for respondents.

The plaintiffs in O.S. No.05 of 2009 in the Court of VI Additional District Judge, Kurnool District, are the revision petitioners. The revision is directed against the order in I.A. No.268 of 2016 filed by revision petitioners herein to reopen the trial for adducing further evidence of plaintiffs. On 15.09.2008, the revision petitioners filed O.S. No.5 of 2009 for a decree directing the respondents herein to pay a sum of Rs.54,76,274/- to petitioners. On 14.09.2016, the 2nd petitioner herein for and on behalf of other petitioners filed affidavit in I.A. No.268 of 2016. The affidavit of 2nd petitioner is very brief and Para 2 of the affidavit is to be excerpted for appreciating the prayer for reopening the suit which reads thus:

> "The above mentioned suit is posted for our reply arguments. While preparing for reply our counsel find that the examination of company secretary of first plaintiff/first petitioner is necessary for proving Exs.A2, A31 and Ex.A33 for avoiding technical objections. This decision could not be taken earlier by inadvertence. Omission to examine the company secretary is not intentional but because of inadvertence."

The respondents herein vehemently opposed the prayer for reopening the case for adducing further evidence. The objections of respondents are that the petition under Section 151 Civil Procedure Code (for short 'CPC') is not maintainable, for there is explicit provision of law in Order 18 Rule 17 of CPC and that the affidavit is deposed by a proforma party to the lis. If at all, need for the purpose for which the petition is filed exists, the application ought to have been moved at the instance of the 1st petitioner. The documents for which the petitioners seek reopening were marked through PW.2, an officer of 1st petitioner corporation and therefore, the Company Secretary's evidence is not required to again speak on these documents. The prayer to reopen the case for adducing further evidence, if allowed and accepted, the same would amount to plugging the holes in the case of petitioners and amounts to dragging the suit which is pending for over seven years. It is further stated that the revision petitioners have not made out a case for reopening the evidence at all. The procedure followed by petitioners is nothing but abuse of process of fair trial. The respondents relied upon the decision of the Apex Court in Shiv Cotex v. Tirgun Auto Plast (P) Ltd.[1]

The trial Court through the order impugned in the revision rejected the prayer. To appreciate the brief grounds for rejecting the prayer, I am of view that the findings recorded by the trial Court can be excerpted:

> "Counter filed. Heard both sides.
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> (1) Admittedly , the suit is coming up for the reply arguments on the plaintiff side, having filed written arguments for the plaintiff.
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> (2) the plaintiff examined as may as 11 witnesses and got marked Exs.A.1 to .38, and plaintiff side was closed on 04.12.2015. PW1 and other witnesses were

[1] (2011) 9 SCC 678

cross examined about the flaws in Exs.A2, A31 and A33. So, the plaintiff and his counsel are very much having knowledge about the case of Defendant. Under the circumstances, filing of the present petition is only to fill up the gaps or lacunas.

(3) The counsel for respondent relied upon a citation reported in 2011 (9) SCC 678.

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Even though the observations of the Hon'ble Apex Court are made in a proceedings concerned in 2nd appeal, the attitude of the parties in the proceedings with the trial or conducting cases is taken into consideration.

In this case, even otherwise also, the plaintiff cannot be permitted to lead evidence, to fill-up the gaps.

In the result, the petition is dismissed."

Hence, the C.R.P.

The counsel for petitioners contends that the 1st petitioner is a corporation owned by State of Maharastra and a company registered under the Companies Act, 1956. Under Order 29 of CPC, the company, in a suit by or against the company, the pleadings may be signed and verified on behalf of company by the Secretary or by any Director or other Principal Officer of the company who is able to depose to the facts of the case. According to learned counsel, therefore there is necessity to examine Company Secretary to comply with the legal requirement of proof of Exs.A2, A32 and A33. The counsel fairly submits that the application for reopening the case to adduce further evidence is filed when the suit is posted for reply arguments of revision petitioners. He challenges the findings as well as objections by contending that the procedural objections, if require attention or an opportunity is to be given to the party, there is no prohibition to permit the 1st petitioner to adduce further evidence of Company Secretary in the matter. According to him, even assuming that the Company Secretary is allowed to enter the box and speak about Exs.A2, A32 and A33, the respondents herein are not subjected to prejudice or hardship and the trial Court can after further evidence, decide the suit on merits.

The petitioners place strong reliance upon the decisions of the Hon'ble Supreme Court in United Bank of India v. Naresh Kumar[2] and K.K.Velusamy v. N.Palanisamy[3]. The paragraphs on which reliance is placed are as follows:

United Bank of India's case:

> "It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and

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[2] (1996) 6 SCC 660
[3] (2011) 11 SCC 275

de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of it's officers a Corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by it's officer.

The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27 (1) (b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.

The Courts below having come to a conclusion that money had been taken by respondent no.1 and that respondent no.2 and husband of respondent no.3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.

The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company; full amount of court fee had been paid by the appellant bank; documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit conclusions.

The suit of the appellant had been dismissed because issue no.1 had been decided against it. The counsel for the parties have not challenged the decision of the lower appellate court on the other issues, which decision was affirmed by the High Court when it dismissed the second appeal in limine. For the reasons stated hereinabove we hold that issue no.1 was wrongly decided and this being so the appellant was entitled to a decree in view of the decision of the lower appellate court on the other issues. The appeal of the appellant is, accordingly, allowed in the aforesaid terms. The effect of this would be that the suit of the appellant would be decreed in accordance with the decision of the lower appellate court on the other issues which that court had decided in favour of the appellant. The appellant will also be entitled to costs.

<u>K.K.Velusamy's case</u>:

12. The respondent contended that section 151 cannot be used for re- opening evidence or for recalling

witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; Arjun Singh vs. Mohindra Kumar - AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal Bhargava - AIR 1966 SC 1899; Nain Singh vs. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health & Neuro Sciences vs. C Parameshwara - 2005 (2) SCC 256; and Vinod Seth vs. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is `right' and undo what is `wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

13. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced

by him when he was leading the evidence. **<u>That provision was deleted with effect from 1.7.2002.</u>** The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

15. The learned counsel for respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is

abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extra-ordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

16. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under section 151 or Order 18 Rule 17 of the Code. They have not considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.

17. The appellant - defendant has taken a consistent stand in his reply notice, written statement and evidence that the agreement of sale was executed to secure a loan of Rs.150,000, as the respondent insisted upon execution and registration of such agreement. If after the completion of recording of evidence, PW1 and PW2 had admitted during conversations that the amount paid was not advance towards sale price, but only a loan and the agreement of sale was obtained to secure the loan, that would be material evidence which came into existence subsequent to the recording of the depositions, having a bearing on the decision and will also clarify the evidence already led on the issues.

18. According to the appellant, the said evidence came into existence only on 27.10.2008 and 31.10.2008, and he prepared the applications and filed them at the earliest, that is on 11.11.2008. As defendant could not have produced this material earlier and if the said evidence, if found valid and admissible, would assist the court to consider the evidence in the correct perspective or to render justice, it was a fit case for exercising the discretion under section 151 of the Code. The courts below have not applied their minds to the question whether such evidence will be relevant and whether the ends of justice require permission to let in such evidence. Therefore the order calls for interference.

19. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.

20. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. **If the**

> **<u>party had</u>** an opportunity to produce such evidence earlier but did not do so or **<u>if the evidence</u>** already led is clear and unambiguous, or if it comes to the **<u>conclusion</u>** that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.
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> 21. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. The courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.

and pray for setting aside the order impugned in the revision.

Mr.Tulasi Raj Gokul *per contra* contends that the deponent of the affidavit in I.A. No.268 of 2016 is for all purposes, a proforma party to the suit. According to him, the affidavit of Mr.B.Nagi Reddy suffers from too much of brevity and further by considering the averments in the affidavit, he contends that the application to reopen the trial of the suit is filed when the case is coming-up for reply arguments of revision petitioners herein, and only to fill-up the gaps now noticed by the petitioners, the present application is filed. By drawing the attention of the Court to the docket proceedings dated 24.07.2015 and the order marking documents, he contends that the documents have been marked through PW.2 subject to objection for marking the Photostat copies covered by Exs.A.8, A.11 and A.32. Therefore, once the evidence of PW.2 was completed as early as August, 2015, thereafter the evidence of respondents was recorded, written arguments were filed by parties, now the suit was posted for reply arguments of revision petitioners and at that stage, the present application is filed for reopening the case to adduce further evidence. Firstly, according to him, the petition is not maintainable, secondly the affidavit does not satisfy the requirements of law or fact or for exercising the discretion, thirdly unless and until illegal exercise of jurisdiction is shown or pointed out against the order impugned in the revision, this Court in its jurisdiction under Article 227 of the Constitution of India as matter of course, does not interfere with the order, exercise the discretion and direct the reopening of the case. He places reliance upon the decision in Shiv Cotex v. Tirgun Auto Plast (P) Ltd. (1 supra) on the following paragraphs:

> 15. It is sad, but true, that the litigants seek - and the courts grant -adjournments at the drop of the hat. In the cases where the judges are little pro-active and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in the proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say `justifiable cause' what we mean to say is, a cause which is not only `sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive.

17. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date

> of hearing for which the matter has been fixed. If they don't, they do so at their own peril."

He prays for dismissing the revision.

I have heard the learned counsel for parties and carefully perused the material available on record.

Now the point for consideration is:

Whether the petitioners are entitled for reopening the suit to adduce further evidence in the matter or not?

For brevity and to avoid repetition, I am not referring to the circumstances already adverted in the preceding paragraphs. Suffice to note that the 1st petitioner is a State owned corporation and a company registered under the Companies Act. The 1st petitioner is required to conform to the prescription of Order 29 Rule 1 of CPC. I have perused the plaint filed by the petitioners and also the oral evidence of PW.2. The petitioners seek reopening of the suit to cure an alleged illegality in proof of Exs.A.2, A.32 and A.33. Ex.A.2 is the true extract of minutes of 156th meeting dated 22.01.2010 of 1st petitioner company. Exs.A.32 is authority letter issued in favour of a few officers by name or the designation. Ex.A.34 deals with resolution dated 27.07.2015 giving *ex post facto* approval for the steps taken by the Regional Manager of 1st petitioner company. The contention of Mr. Virupaksha Dattatreya Gouda is that the examination of Company Secretary is very much necessary and required in the fact situation of the case, and if the petitioners are allowed to examine Company Secretary the proof of these exhibits is taken care and the respondents in any way do not suffer hardship or prejudice. According to him, as directed by the Apex Court, In United Bank India's case (2 supra) when such objection can be directed to be condoned at the stage of appeal before the Supreme Court, the request for reopening the evidence when the suit is coming for reply arguments, is available to the Court, procedure is intended for furthering the cause of justice and should not be treated as hindrance by the Court. I have carefully examined the ratio of Apex Court in United Bank of India's case (2 supra). This Court is of the view that the circumstances in the present case are different and the ratio cannot be applied directly to the fact situation of the case. As already noted, the 1st petitioner through PW.2 claims to have complied with the requirements of Order 29 of CPC and these exhibits are already marked. The objection is in respect of Exs.A.8 to A.11 and A.32. Thereafter, the evidence of defendants was taken up, matter was posted for arguments now. As per the requirements of Order 29 or under Order 6 Rule 14 of CPC, the 1st petitioner has already availed full opportunity of adducing evidence. The petitioners do not specify the further evidence they intend to adduce. But at the time of reply arguments, it is contended that the petitioners intend to examine the Company Secretary of the 1st petitioner Company. In my considered view, at this stage of matter by reference to the decision reported in United Bank India's case (2 supra), the request of petitioners cannot be accepted and the suit reopened for adducing further evidence. As to the objection of maintainability of application under Section 151 CPC, the answer to both questions is available in Paragraphs 12, 19 and 20 of K.K.Velusamy's case (3 supra). Keeping in view the ratio of the very cases on which the revision petitioners rely upon and also the principle of the Apex Court in Shiv Cotex's case (1 supra), I am satisfied that the discretion exercised by the trial Court does not warrant interference. The revision fails and accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date: 27.01.2017
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