

THE HON' BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.997 of 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the orders dated 06.01.2017 in I.A.No.807 of 2016 in I.A.No.511 of 2015 in O.S.No.508 of 2013 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad.

2. Heard both the counsel.

3. The contention of the learned counsel for the petitioners is two fold:

The petitioners counsel prepared the counter in I.A.No.511 of 2015 in hurry burry manner, therefore one more opportunity may be given to them for amendment of counter. He further submitted that no prejudice would be caused to the respondents even if the matter is reopened for the purpose of amendment of the counter. He further submitted that the order passed by the court below is not sustainable either on facts or in law. *Per contra*, learned counsel for the respondents submitted that the petitioners are intentionally and willfully dragging the matter on one pretext or other. He further submitted that there is no illegality or irregularity or impropriety in the orders of the trial Court, which warrants interference of this Court.

4. The facts leading to filing of the present revision are briefly as follows: The petitioners herein have filed O.S.No.508 of 2013 on

the file of the VII Senior Civil Judge, City Civil Court, Hyderabad against the respondents 1 and 2 seeking perpetual injunction. The trial Court passed *ex parte* decree on 26.09.2013. Thereafter, the respondents herein have filed I.A.No.511 of 2015 to set aside the *ex parte* decree. The respondents also filed I.A.No.608 of 2014 to condone the delay of 303 days in filing the petition to set aside the *ex parte* decree. The trial Court allowed I.A.No.608 of 2014 on 02.06.2016. The petitioners herein filed C.R.P.No.4333 of 2016 challenging the orders dated 02.06.2016 in I.A.No.608 of 2014. This Court dismissed the C.R.P. on 10.11.2016. I.A.No.511 of 2015 is pending before the trial Court. The trial Court after hearing both sides, posted I.A.No.511 of 2015 for orders on 09.11.2016, the petitioners herein filed I.A.No.85 of 2016 for reopening of the matter for further hearing and the same was allowed on 30.01.2016. Again the petitioners filed I.A.(SR) No.6094 of 2016 in I.A.No.511 of 2015 for reopening of the matter. Again the trial Court suo moto reopened the matter for further hearing. Again, third time, the petitioners filed I.A.No.807 of 2016 seeking for amendment of the petition and the trial Court dismissed the same on 06.01.2017. Hence, this revision.

To substantiate their arguments, learned counsel for the petitioners has drawn the attention of this Court in *ANDHRA BANK v. ABN AMRO BANK N.V. AND OTHERS*¹. As per the principle enunciated in the case cited supra, mere delay is not a ground for dismissal of the petition. The crucial question that falls for

¹ AIR 2007 SUPREME COURT 2511

consideration is whether there are any justifiable grounds to allow I.A.No.807 of 2016. It is not in dispute that the petitioners herein filed the counter in I.A.No.511 of 2015 in the month of January 2016.

It is not out of place to extract paras 4 and 5 of the affidavit.

4. It is further most humbly submitted that during the pendency of the I.A.No.608 of 2014, itself as the Respondents were pressing before the Hon'ble Court, the Hon'ble Court was pleased to pass the conditional orders in the above I.A.No.511 of 2015, to file the counter, and by the complying the conditional orders of the Hon'ble Court the Petitioners herein filed their counter in the above I.A.

5. It is further most humbly submitted that the above I.A.No.511 of 2015, was reserved for orders on 09.11.2016, and the Petitioners have filed separate applications to reopen the same and my counsel has further pointed out that due to oversight and hurry burry, the Petitioners herein have not put forth, few important facts, which are pivotal to decide the I.A.No.511 of 2015, as such it is just and necessary to permit the Petitioners to amend the counter in I.A.No.511 of 2015, by adding the under mentioned Paragraphs:-

Para No.3(a) to be added as under:

“At the outset it is most humbly submitted that as per the affidavit of the Petitioners in I.A.No.511 of 2015, on Page No.1, Para No.2, line No.1, in April 2014, (no specific date was mentioned) a suit for perpetual injunction was filed by them against the Petitioners herein vide O.S.No.397 of 2014, pending on the file of Hon'ble XXI Junior Civil Judge, City Civil Court at Hyderabad, but in fact said suit was filed on 10.03.2014, and filing docket of said suit shows the date as 10.02.2014, hence the allegations that the said suit is filed in the April 2014, are totally false and vague pleadings.”

Para No.3(b) to be added as under:

“At the outset it is most humbly submitted that the contention of the Petitioners is that on filing of the counter affidavit in I.A.No.51 of 2014, in O.S.No.397 of 2014, by the Respondents it has come to the knowledge of the Petitioners about the passing of the ex-parte decree, but in fact the counter affidavit in the said I.A.No.51 of 2014, in O.S.No.397 of 2014, was filed on 17.07.2014, and the present application was filed on 25.08.2014, it simply establishes that it was very well within knowledge of the Petitioners about the passing of the *ex-parte* decree”.

Para No.3(c) to be added as under:

“At the outset it is further most humbly submitted that the Respondents herein already filed O.S.No.570 of 2015, pending on the file of Hon’ble XXI Junior Civil Judge, City Civil Court, at Hyderabad, seeking the cancellation of the G.P.A., of the Deponent herein and under challenge the Deponent herein has no locus standi to file the present application or context the present application”.

It is the case of the petitioners that the petitioners’ counsel filed the counter in hurry burry manner. Mere filing of the counter by the counsel in a hurry burry manner is not a ground to allow the petition to amend the counter. While deciding the petitions of this nature, the Court has to take into consideration the conduct of the parties. A perusal of the record reveals that the petitioners have been filing petitions one after other for reopening of the matter. This clearly indicates some how or other the petitioners want to protract the matter as far as possible. If this type of petition is allowed in a routine manner, the litigant public may feel that they can protract the matters to any number of years by filing petitions

on one ground or other. If really there is any defect in the counter, the petitioners ought to have filed the similar type of petition along with I.A.No.85 of 2016 or I.A.(S) 1694 of 2016. For the reasons best known to them, the petitioners kept quiet for such a long time and filed the present petition.

At the time of arguments, both the counsel submitted that on 01.03.2007 the trial Court heard both parties and orders reserved. If petition is allowed at this point of time, certainly it would cause untold hardship to the respondents. It is not uncommon to file the petitions of this nature when the matter is reserved for orders.

Having regard to the facts and circumstances of the case, I am of the considered view that this is not a fit case to allow the revision. There is no illegality or irregularity or impropriety in the orders of the trial Court, which warrants interference of this Court. There are no merits in this revision and the same is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. As a sequel, the miscellaneous petitions, pending if any, shall stand closed.

March 10, 2017.
Pns

T.SUNIL CHOWDARY, J