

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.3190 OF 2017

ORDER:

Questioning the order dated 15.06.2017 in I.A. No.259 of 2017 in O.S. No.50 of 2014, passed by the learned Principal Senior Civil Judge, Mancherial, allowing the application under Order - VIII Rule 1-A (iii) read with Section 151 of the Code of Civil Procedure, 1908 (CPC), filed for receiving the documents by condoning the delay, the present Civil Revision Petition is filed by the revision petitioner - plaintiff against the respondents - defendants.

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the original suit.

3. Substantially, the request made by the respondents in the said interlocutory application was that in view of the pendency of O.S. No.1077 of 2015, relevant documents were held up in that suit and could not be filed and, therefore, the delay has occurred. The said ground was resisted by the revision petitioner on the ground that the documents which were also not referred to in the written statement were submitted and, therefore, cannot be received by condoning the delay.

4. The Court below finding that the grounds projected by the revision petitioner that the documents now sought to be received could not be filed earlier in view of the pendency of the suit before the

learned Principal Junior Civil Judge, Mancherial, as some of the documents filed therein relate to the lands adjacent to the suit property, including third property affidavits of the neighbours.

5. The learned Senior Civil Judge distinguished the ruling in **Bolla ajay Babu v. Nalla Manikyamma**¹ relied on by the revision petitioner stating that the said case was coming up for further evidence, whereas in the present case, trial has not at all commenced, and, therefore, allowed the petition.

6. Heard Mrs. D. Pramada, learned counsel for the revision petitioner (plaintiff), and Mrs. Nimmagadda Revathi, learned counsel for the respondents (defendant Nos.1 and 2), and perused the material on record.

7. The learned counsel for the revision petitioner would raise two grounds. The first is, the Court below ought not to have allowed the interlocutory application as the mandatory requirement is to file all the documents along with the written statement; second, the third party affidavits cannot be received as the documents were filed in a different suit, but the Court below went wrong and allowed the interlocutory application by condoning the delay. The learned counsel placed reliance on the very same decision of this Court referred supra.

¹ 2010 (1) ALD 163

8. As rightly observed by the Court below, such an application was filed, in the decision referred supra, where evidence was already commenced. In that fact-situation, affirming the findings recorded by the trial Court for rejection of applications, Civil Revision Petition was dismissed by this Court.

9. In the instant case, admittedly, the trial has not commenced yet. The learned counsel for the respondents would place reliance in **Rajaiah R.V.G.K. Ranga Rao v. Nizams Sugars Limited, Latchayyapeta, Seethanagaram Mandal, Vizianagaram District²**, wherein, a learned Single Judge of this Court observing that an application for leave to receive certain documents by the respondents though, sought to be filed after closure of the revision petitioner's evidence when valid reasons for not filing the documents earlier, were shown, the Court should ordinarily lean in favour of receiving the documents than refusing the same, set aside the order of the Court below in refusing to receive the documents.

10. The other decision relied on by the learned counsel for the respondent is in **G.P.R. Housing (P) Ltd., Hyderabad v. C. Prithvi Raj Reddy³** rendered by yet another Single Judge of this Court, in a similar application, when rejected by the Court below on the ground that the said application was filed at a belated stage after closure of the evidence, observing that when the revision petitioner pleaded

² 2004 (1) ALD 387

³ 2014 (6) ALD 291

necessity to produce additional evidence that has arisen on account of denial of receipt of money under Ex.A-4 by respondent No.5 - defendant No.3 in her cross-examination, refusing to receive the documents was held not justified, as the endeavour of the Court is to decide real controversy involved in the suit and the documents would help to decide the issue effectually.

11. In the present case, allowing the interlocutory application by the Court below to receive the documents, therefore, cannot be faulted, but, however, so far as third party affidavits are concerned, they cannot be received as they do not constitute substantive evidence and only at the threshold of the proceedings, as contemplated under Order - XIX Rule - 1 of CPC, they can be received as evidence in the absence of any other documentary evidence.

12. Therefore, to the extent of third party affidavits, the request has to be rejected and, accordingly, directing the Court below to exclude the third party affidavits, the Civil Revision Petition is dismissed at the admission stage itself. It is, however, open to the revision petitioner to take objection as regards relevancy and admissibility when the documents are sought to be marked.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the revision stand disposed of.

July 28, 2017.
PV

A. SHANKAR NARAYANA, J