

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.6397 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner under Section 115 of Code of Civil Procedure, challenging the order, dated 16-09-2016 passed in I.A.No.46 of 2016 in A.S.No.18 of 2013 by the XI Additional District Judge, Piler.

The petitioner herein filed I.A.No.46 of 2016 under Order XLI Rule 27 read with 151 of Code of Civil Procedure to receive additional documentary evidence shown in the list annexed to the petition on various grounds. But the appellate Court dismissed the petition assigning its own reasons, considering the petition, independently, while keeping the appeal pending.

Aggrieved by the said order passed by the appellate Court the present revision is filed on various grounds and mainly contended that the I.A. filed under Order XLI Rule 27 read with 151 of Code of Civil Procedure has to be considered along with the appeal and if for any reasons the Court is inclined to receive any documentary evidence the Court has to follow the provisions of Order XLI Rules 28 and 29 of Code of Civil Procedure to mark the documents.

Instead of following the said procedure the appellate Court independently decided the application filed under Order XLI Rule 27 of Code of Civil Procedure before deciding

the appeal and the order is contrary to the judgment reported in **A. Andisamy Chettiar v. A. Subburaj Chettiar**¹, wherein it is held in paragraph No.16 as follows:

“The Court also noted the decision reported in Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148 wherein the Apex Court had held as under:-

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out 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. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.....”

Thus, the order passed by the appellate Court is contrary to the settled principles of law and the same is hereby set aside by restoring the petition while directing the appellate Court to consider the application filed under Order XLI Rule 27 of Code of Civil Procedure along with the appeal and pass appropriate order, in accordance with law.

With the above direction, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

June 07, 2017
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¹ AIR 2016 Supreme Court 79

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