

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1889 of 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt. 29.01.2015 in I.A.No.1924 of 2014 in O.S.No.13 of 2009 passed by II Additional District Judge, East Godavari District at Amalapuram, dismissing an application filed under Order VIII Rule 1 (a) of CPC to receive the documents set out in the list filed along with the petition on the ground that these documents were held up with defendant No.2 and thereby, the petitioners could not file those documents along with the Written Statement as required under Order 8 (1) of CPC and therefore, sought to condone the delay in filing the documents and marking them as exhibits in the evidence.

The respondent/plaintiff filed Counter affidavit denying the allegations made in the affidavit annexed to the petition raising several contentions, mainly on the ground that the evidence of plaintiff was closed long back and they were cross examined elaborately based on certain documents, without filing any documents, but the defendants/petitioners did not choose to file those documents into the Court. The plaintiff sent a notice to furnish the copies of those documents under RTI Act, but they did not supply copies of those documents. Later, the respondent/plaintiff also issued a notice under Order XII Rule 8 of CPC calling upon the petitioners/defendants to produce the documents, but surprisingly, the petitioners filed objections on the notice served on them, under Order XII

Rule 8 of CPC stating that those documents are not necessary and they need not produce the documents.

It also contended that there was no reference about these documents in the Written Statement and no explanation was offered for non production of documents at the earliest stage and therefore, the petitioners cannot be permitted to file a petition along with documents seeking leave of the Court and prayed for dismissal of the petition.

The trial Court, upon hearing the argument of both the counsel, passed a reasoned order relying on the judgments reported in *Madanla Vs. Shyamlal*¹ and *Ravi Sathish v. Edala Durga Prasad and others*² and mainly on the ground that there was no reference in the written statement about these documents. However, the petitioners did not explain the reason for failure to produce the same before commencement of the trial and the petitioners did not even furnish the copies of the documents when the plaintiff filed an application under RTI Act. When the respondent/plaintiff sent notice under Order XII Rule 8 CPC, the petitioners/defendants filed objections on the notice served on them to produce the documents contending that those documents are not necessary for deciding the real controversy and they need not produce the same.

Despite raising such contentions, now the petitioners themselves wanted to produce the documents though they contended earlier that they were not necessary to produce the same into Court by filing objections on the notice served under Order XII Rule 8 of CPC and therefore, those

¹ 2002 (1) ALD 46

² 2009 (3) ALT 236

documents cannot be received and marked as exhibits and the trial Court rightly dismissed the petition.

The present petition is filed under Article 227 of the Constitution of India raising several contentions mainly on the ground that those documents are necessary and the trial Court is not supposed to decline the leave on the ground that the petitioners/defendants earlier filed objections to the notice served under Order XII Rule 8 CPC and those documents are crucial to decide the real controversy between the parties and that apart no prejudice would be caused to the respondent/plaintiff if these documents are received and marked as exhibits and on the other hand, it would assist the Court to decide the real controversy between the parties more effectively and prayed to set aside the Order of the Trial Court and receive and mark the documents by exercising power under Order VIII Rule 1 (a) of CPC.

During argument, the learned Government Pleader for arbitration reiterated those contentions while drawing attention of this Court to Order VIII Rule 1 (a) of CPC where the petitioners/defendants are required to ask leave of the Court to file the documents by filing an application and when no prejudice would be caused if those documents are marked, the Court ought not to have denied the petition and committed an error and prayed to direct the trial Court to receive and mark the documents as exhibits.

As seen from the material on record, more particularly, the suit was filed by M/s Devi Engineering and Constructions, Amalapuram, represented by its Managing Partner, A. Adinarayana, for recovery of Rs.32.00 lakhs, which is invested in the construction of bridge, as per

Contract No.157/07-08 with subsequent interest at 18% p.a., The petitioners herein filed Written Statement raising several objections and now they sought leave of this Court to permit them to file (1) a Notice dt.22.04.2008 issued by Defendants to plaintiff; (2) Notice dt. 6.5.2008 issued by defendant No.5 to the plaintiff; (3) returned postal Cover addressed to the plaintiff; (4) M Book No.1557 AA relevant pages 88 to 90; and (5) Bills abstract book No.1873 AA relevant pages 76 to 90.

There is a reference in para No.2 of the Written Statement about issuance of Notice dt. 22.04.2008 and 6.05.2008, but the copies of those notices were not filed before the Court along with Written Statement, as required under Order VIII Rule 1 of CPC. First notice was issued by the defendants to the plaintiff, whereas second notice was issued by defendant No.5 alone to the plaintiff. These documents would be available with the petitioners, who are defendant Nos. 1 to 5 in the suit, and no explanation was offered for their failure to file those documents along with the written statement, as required under Order VIII Rule 1 (a) CPC. However, rejecting the request of the petitioners to receive the documents on the ground that there was no reference of these documents is an error, in the order passed by the trial Court. But, when the petitioners did not explain any reason much less sufficient reason which prevented the petitioners from filing those documents along with the petition, more particularly, when those documents are within the knowledge and referred in para No.2 of the Written Statement, they cannot be received as a matter of routine. The other three documents are only M Book, Bill Abstract Book and returned postal cover, and those documents were not referred anywhere in the Written Statement. In these circumstances, receiving of those documents, at this

stage, without any factual foundation in pleading i.e., Written Statement is impermissible.

Curiously, the respondent/plaintiff filed an application under RTI Act to furnish the copies of those documents, referred to above, but, obviously for the reasons best known to the petitioners, they did not even furnish the information under RTI Act to the respondent. The respondent also served a notice under Order XII Rule (8) of CPC calling upon the petitioners to produce those documents in Form No.12 of Appendix (C). But, the petitioners/defendants herein filed objections that those documents are not relevant and necessary for deciding the controversy and when they filed objections and contended that they are not necessary, how a need had arisen now to file those documents before the Court was not explained by them. It appears from the Government Pleader for defendants/petitioners that he decided to deny everything whatever contended by the plaintiff and in the said process, they filed objections to the notice issued under Order XII Rule (8) of CPC even without finding whether those documents are relevant and necessary to decide the real controversy between the parties. In the cross examination also, it appears that these documents were not confronted to the witnesses and if these documents are received, at this stage, the respondent/plaintiff would be deprived of their right to explain about these documents and much prejudice would be caused to the plaintiff in such a case.

In the entire affidavit, there was no explanation as to how the necessity had arisen subsequent to filing of objections after serving notice under Order XII Rule 8 of CPC i.e., Form No.12 in Appendix (C). In the absence of any explanation, mere filing a petition along with the documents

making allegations, if accepted, it would render the purpose of incorporating Order VIII Rule 1 (a) of CPC redundant. It is clear from the record that the petitioners/defendants did not prosecute the proceedings diligently, being giant as fair litigants before the trial Court but exhibited sheer negligence without visualizing the consequences of objections to the notice served under Order XII Rule (8) of CPC. Therefore, the explanation whatever submitted by the petitioners is not satisfactory to permit them to file those documents by granting leave and though they are crucial documents, the petitioners withhold them for different reasons. Therefore, at this stage, on mere asking the Court for leave, this Court cannot grant leave without explaining cause much less sufficient cause for failure of the petitioners/defendants to file those documents along with Written Statement, as required under Order VIII Rule 1 (a) of CPC. Therefore, the trial Court rightly declined to grant leave to the petitioners under Order VIII Rule (1) (a) of CPC. Hence, I find no ground to set aside the Order dt.29.01.215 since it is supported by satisfactory reasoning.

The jurisdiction of this Court under Article 227 of the Constitution is limited and it is supervisory in nature, hence, this Court cannot set aside the order passed by the Tribunal or Subordinate Courts unless exercised power beyond its jurisdiction or crossing its boundaries. It means that the duty of this Court is to see that Subordinate courts and the trial Courts shall not cross their limits while exercising jurisdiction conferred on those Courts. But, here nothing has been pointed out that the appellate Court exceeded its jurisdiction or exercised jurisdiction which is not conferred on it, but pointed out that the reason for not filing the documents was not considered.

The scope of jurisdiction of this Court under Article 227 of the Constitution of India is considered by the Apex Court in *State, through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and others* (2003) (6) SCC 641, wherein it was held that the Court, while exercising jurisdiction under Article 227 of the Constitution, can interfere with the orders passed by the Tribunals and Subordinate Courts only in certain circumstances, pointed by me in the earlier paragraph, and even though the Order is wrong, this Court cannot exercise the power under Article 227 of the Constitution of India.

In view of the limited jurisdiction, which is supervisory in nature, as referred to above, I am not inclined to interfere with the Order dt. 29.01.2015 passed by the trial Court in IA No.1924 of 2014 in O.S.No.13 of 2009 and hence, this Civil Revision Petition is liable to be dismissed as it is devoid of merits.

In the result, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 21-04-2017.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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