

HONOURABLE SRI JUSTICE N. BALAYOGI

CIVIL REVISION PETITION No. 5666 OF 2017

ORDER:

1. The petitioner/plaintiff aggrieved by the order dated 30.06.2017 In I.A.No.819 of 2016 in O.S.NO. 36 of 2015 passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge, Parvathipuram, preferred this revision petition.

2. The revision petitioner originally filed I.A.No.884 of 2014 to receive the listed documents to establish the actual expenditure incurred by it during the extended period of the contract and to mark them as exhibits and to proceed further with the trial to arrive at a just decision.

3. The contentions of the revision petitioner IA.No.819 of 2016 are that the evidence to be introduced by it consists of documents namely invoices/vouchers/bank statements etc., relating to the period of execution of the work during the extension period. The said documents were shifted from Thotapalli project site office to Mancherial project site office and were later shifted from there to Mumbai head office. In the said transit, the documents got mixed up and only after putting great effort and time, they were able to segregate, index and scan those documents. The said documents are being submitted in support of

its claim arising out of unforeseen condition requiring huge increase in rock excavation which are marked and annexed as exhibits. The said documents pertain to the extended period of contract. It is further contended that the documents in support of claim for additional cost incurred due to prolongation of the contract period for the extended period in December, 2007, from 01.01.2008 to 28.02.2008, 1.3.2008 to 31.12.2008, 1.1.2009 to 31.12.2009 and 1.1.2010 to 31.12.2010 are computerized ledger accounts, original vouchers, salary slips, bank statement, copy of insurance policy, bank guarantee extensions and annual reports for the year 2004, 2005, 2006 and 2007. It is the further contention of the petitioner that these documents are essential to prove and establish the actual expenditure incurred by it in the extended period of contract.

4. The respondents filed counter to I.A.No.819 of 2016 denying the petition averments and contending that the documents sought to be received are only self serving documents which were recently prepared to suit their claim subsequent to the examination of the material witnesses as P.Ws. 1 and 2. There is no pleading as to the existence of the said documents and there is no mention about the said documents in the evidence of P.W.1.

5. The respondents further stated in the counter affidavit that during the trial, the revision petitioner filed I.A.No. 884 of 2014 to receive certain luminious documents stating that those

documents were mixed up in their records and the said petition was allowed. If really the documents now sought to be produced are available and in existence by then, they might and ought to have produced them at that time.

6. Now the point that arise for determination is *whether the finding of the trial Court that inasmuch as the petitioner-company failed to refer the documents in question in the plaint or even otherwise did not mention about them in the earlier application in I.A.No.884 of 2014, it cannot file these documents, is tenable.*

7. Learned Counsel for the petitioner contends that since the documents sought to be produced were mixed up during the transit, they could not mention about them in the plaint as well as in the earlier petition; that those documents are necessary to prove and establish actual expenditure incurred during the extended period of contract and that the said documents reflect the expenditure incurred during the said period.

Despite service of notice, none appeared for the respondents nor any representation is made on their behalf.

8. On the other hand the respondents contended before the trial Court that these documents were brought into existence subsequent to the examination of the material witnesses P.Ws. 1 and 2. In the absence of any plea about the existence of those

documents in the plaint as well as in the earlier interlocutory application, they cannot be received.

9. The averments in the petition goes to suggest that the petitioner could not mention in the plain as well as in the earlier petition about the documents sought to be produced now as those documents were got mixed up during the transit from Thotapalli project site office to Mancherial project site office and were later shifted from there to Mumbai head office. Only after putting great effort and time, they could able to segregate, index and scan those documents listed in the table of documents at Pages 2 and 3 of the petition affidavit.

10. In the counter, the main contention of the respondents is that the details of the documents sought to be produced are not mentioned in the plaint or in the subsequent proceedings in I.A.No.884 of 2014 and they were brought in existence only after examining the material witnesses PWs.1 and 2.

11. In the case of BADA BODIAH AND ANOTHER Vs. BADA LINGASWAMY AND OTHERS {2003 (1) ALD 790}, it was held that if the plaintiff applied for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise discretion having regard to the facts and

circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage. Non mentioning of the documents sought to be produced at the subsequent stage is a curable defect. With leave of Court, which is condition precedent under sub-rule (3) of Rule 4 of Order VII read with Sub-rule(1) of Order 13 to receive the documents can be produced at the time of trial. But order VII Rule 14(3) being an exception to the rule in Order VII Rule 14(1) as well as Order XII Rule 1(1)(2), the power to grant must be exercised in rare cases and not in a routine manner.

12. The facts of the case on hand are similar to the facts of the case referred to above. The petitioner herein is aggrieved by the order dated 30.06.2017 passed In I.A.No.819 of 2016 in O.S.NO. 36 of 2015 passed by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge, Parvathipuram refusing to receive the documents sought to be produced. The revision petitioner filed suit O.S.No. 36 of 2015 for recovery of Rs.66,12,94,013/- with subsequent interest and costs. It is clear from the counter affidavit that the petitioner/plaintiff has examined material witnesses P.Ws. 1 and 2. Earlier, the petitioner filed I.A.No. 884 of 2014 for receiving certain documents and the same was allowed. Subsequently, the impugned I.A. is filed to receive the listed documents.

13. It is pertinent to note that admittedly there is no mention about the documents sought to be produced in the plaint as well as in the earlier application in IA.No. 884 of 2014. Rule 14 of Order VII as it stood prior to 1.7.2002 reads as under:

“Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other documents: where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.”

14. The above said provision was substituted by the Code of Civil Procedure (Amendment Act) 1999 and after amendment it reads as under:

1. Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall at the same time deliver the document and a copy thereof, to be filed with the plaint.

2. Where any such document is not in the possession or power of the plaintiff, he shall wherever possible state in whose possession or power it is.

3. Where a document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on behalf of the plaintiff at the hearing of the suit.

4. Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or handed over to a witness merely to refresh his memory.

8. Sub-Rule (3) of Rule 14 of Order VII was again substituted and the following Sub-rule (3) was inserted:

A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

15. The law as it stands requires a plaintiff who relies or sues upon a document and who is in possession of such a document to enter such a document in a list and shall produce it in the Court when the plaint is presented. If the document is not in possession or power of the plaintiff, the law requires the plaintiff to state in whose possession or power the document is. If the document which ought to be produced when the plaint is presented or a document which ought to be entered in the list to be added or annexed to the plaint is not produced or entered accordingly, no such document shall be received in evidence on his behalf on hearing of the suit unless prior leave of the Court is obtained. Sub-rule (3) of Rule 14 as it stood prior to the Code of Civil Procedure (Amendment) Act, 2002 totally denied the opportunity to the plaintiff to produce any document to be received in evidence on his behalf at the hearing of the suit. But the harshness of the provision was taken away by Section 8(i)(3) of the Code of Civil Procedure (Amendment) Act, 2002 by substituting a new Sub-rule (3) according to which in a given case with the leave of the Court a document can be produced in

evidence on behalf of the plaintiff which was not earlier annexed or produced at the time of presenting the plaint.

16. Further, as per Sub-rule (2) of Order XIII CPC as it stood prior to Amendment Act, 1999, the documentary evidence which is not produced at or before settlement of issues shall not be received at any subsequent stage of proceedings unless good cause is shown to the satisfaction of the Court for the non production of the documents at the time of settlement of issues. Rules 1 and 2 of Order XIII were substituted by Rule 1 of Order XIII of the Amendment Act, 1999.

17. Sub-rule (3) of Rule 14 of Order VII empowers the Court to give permission or leave to the plaintiff to produce documents at a subsequent stage of hearing of the suit. Order XIII Rule 1 and Order VII Rule 14(3) have to be read together harmoniously. Reading together would lead that if the plaintiff applies for permission or leave to produce documents to be received in evidence at the hearing of the suit which documents were not produced on or before settlement of the issues or at the time of production of the plaint, the Court has to exercise sound discretion having regard to the facts and circumstances of each case. Mere non-mention of the documents in the plaint or subsequent incidental or supplemental proceedings in the suit does not in any manner affect the power of the Court to grant leave to produce the documents at the subsequent stage. Having

due regard to the above settled legal position on the point and if the facts and circumstances of the case on hand are tested on the touch stone of the said legal position, I find support for my view in the decision referred to supra.

18. Non mentioning of the documents sought to be produced at the subsequent stage is a curable defect. Sub-rule (3) of Rule 4 of Order VII read with sub-rule (1) of Order 13 empowers the Court to receive the documents sought to be produced at any time of the trial. Therefore the contention of the respondents that the documents sought to be produced cannot be received as there is no mention of those documents either in the plaint or in the earlier petition is not tenable. In the facts and circumstances of the case, I am of the considered opinion that the admissibility or proof of the documents concerned can be considered at the time of receiving the same to exhibit in the suit.

19. The Trial Court without considering the facts in proper perspective and applying its mind committed error simply rejecting the application on the ground that there is no mention about the documents sought to be produced in the plaint as well as in I.A.No.88 of 2014. The petitioner satisfactorily explained the cause for the delay in not mentioning the details of the documents sought to be produced in the plaint or in the earlier I.A.No.884 of 2014 that the documents in question were got mixed up during the transit from Thotapalli project site office to Mancherial project site

office and were later shifted from there to Mumbai head office and only after putting great effort and time, they could able to segregate, index and scan those documents and those documents are essential in the suit to support their claim of additional cost incurred due to prolongation of the contract period.

20. For the foregoing discussion and in the result, the Civil Revision Petition is allowed setting aside the the order dated 30.06.2017 passed In I.A.No.819 of 2016 in O.S.NO. 36 of 2015 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-II Additional District Judge, Parvathipuram and directing the trial Court to receive the documents sought to be produced in evidence subject to the petitioner/plaintiff proving them as per law. The respondents/defendants shall be entitled to raise all objections regarding the admissibility, proof and evidentiary value of the documents.

21. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE N. BALAYOGI

DATED 15th December, 2017.
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