

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.4005 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 12.07.2017 in I.A.No.652 of 2016 in O.S.No.128 of 2007 passed by the learned XII Additional Chief Judge, City Civil Court at Secunderabad.

The petitioner is respondent No.4-defendant No.4, the first respondent herein is the petitioner-plaintiff and respondent Nos.2 to 29 are respondent Nos.1 to 3 and 5 to 29 before the trial Court.

For the sake of convenience the parties will be hereinafter referred to as they were arrayed before the trial Court for convenience.

The petitioner filed a petition under Section 151 C.P.C. seeking a direction against respondent Nos.7 to 29 to deposit monthly rent into the Court for the premises (mulgies/portions), which they occupied in suit schedule 'A' and 'B' properties during pendency of the suit.

The petitioner contended that he filed a suit for partition of the schedule properties against respondent Nos.1 to 6. The first respondent, who is the mother of the petitioner, died during pendency of the suit. His father B.Shankaraiah died on 17.07.2006 leaving behind him and respondent Nos.1 to 6 as legal heirs to succeed. Late Shankaraiah was a business man carried on business in iron, steel, cloth and chit fund business etc. He

acquired 'B' schedule property during his lifetime and also acquired the other properties shown in the schedule 'A' to 'G' and earned huge income. Respondent Nos.7 to 29 are the tenants in occupation of various mulgies/portions of the schedule properties and that the petitioner is entitled to claim 1/6th legitimate share in the schedule properties after the death of the first respondent, mother of the petitioner and respondent Nos.2 to 6. The fourth respondent along with other respondents are collecting rent from respondent Nos.7 to 29 and appropriating for himself. Unless respondent Nos.7 to 29 are directed to deposit the rent into the Court, the petitioner will be deprived of his legitimate share in the property including the income accrued thereon and will be put to serious loss. Therefore, sought for the above direction.

The petitioner-first respondent herein filed counter denying the material allegations *inter alia* contending that the fourth respondent has no right to claim any share in the property at least share at the rate of 1/6th and that he is also not entitled to claim share in the rent payable by the tenants in occupation i.e., respondent Nos.7 to 29 and also raised several other contentions. The other respondents did not file any counter in the revision petition.

Upon hearing the argument of the learned counsel for the fourth respondent, the learned XII Additional Chief Judge, City Civil Court at Secunderabad, passed the following cryptic order in I.A.No.652 of 2016 in O.S.No.128 of 2007, which is extracted hereunder:

“It is an admitted fact that the petitioner filed the suit for partition and separate possession.

The petitioner filed the present application to direct the defendants 7 to 29 to deposit the monthly rents pertaining to schedule A and B properties.

On going through the affidavit enclosed with the petition and also taking into consideration of the nature of the suit, I am of the opinion that it is just and proper to allow the petition and to direct the respondents 7 to 29 to deposit monthly rents till disposal of the suit.

Accordingly the petition is allowed. The respondents 7 to 29 are directed to deposit monthly rents in court in respect of schedule A and B property till disposal of the suit. No costs.”

Aggrieved by the same, the present revision is filed raising several contentions.

During hearing, Sri P.Shiv Kumar, the learned counsel for the fourth respondent-petitioner herein, while reiterating the grounds urged in the main petition, he contended that when the petitioner did not claim any relief of rendition of account and mesne profits etc, he is not entitled to claim the rent payable by the tenants and in fact an amendment was carried out to the plaint incorporating Clauses B to D seeking a direction against respondent Nos.7 to 29 to deposit rent into Court, but the order is subject matter of another petition filed for amendment of plaint. Therefore, in the absence of any relief for profits or income on the property or rendition of account, the petitioner is disentitled to claim such reliefs, apart from that, the order is bereft of any reasoning and the same is unsustainable under law. The petitioner did not serve any summons on respondent Nos.7 to 29 in the main suit though a notice was ordered to them through

Court and on payment of process by order dated 12.04.2016 and sought the relief against those parties, who have not served with the summons and copy of the plaint, thereby the order passed by the Court below is illegal. It is also contended that the order is cryptic without disclosing any reason, enabling the parties to know about the reasons for arriving at such conclusion. The other contention raised before this Court is that a gift deed was executed in favour of respondent Nos.3 to 5 by the first respondent. Finally, he requested this Court to set aside the order passed by the Court below allowing this revision.

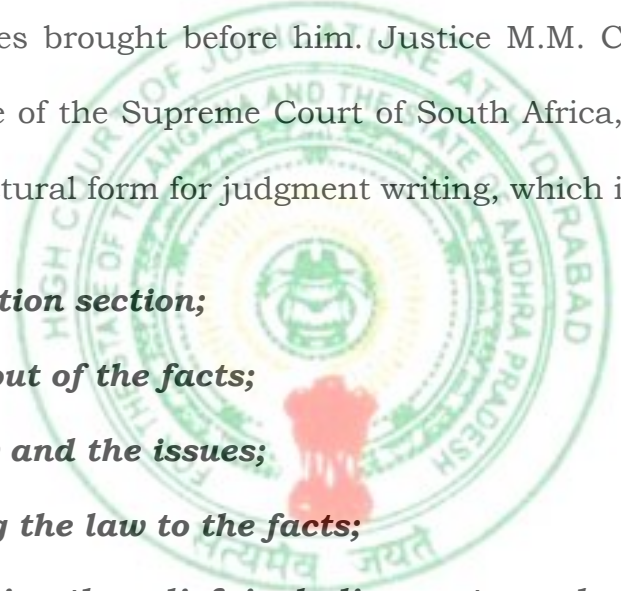
The learned counsel for the first respondent herein supported the impugned order in all respects and requested the Court to dismiss the petition.

As seen from the order under challenge, the petitioner and the respondents have raised many contentions, which are required to be adverted to by the Court below, more particularly, service of summons as directed by the Court below to respondent Nos.7 to 29 and effect of non-service of summons in the suit and issuing a direction against them even before serving summons in the suit is a serious illegality committed by the Court below and apart from that the order is bereft of any reasoning. The petitioner raised several contentions in the affidavit which are running into 12 pages and similarly the fourth respondent in the counter raised several contentions running into 10 pages. But the Court below even without adverting to various contentions raised, passed the cryptic order.

Time and again, the Apex Court and this Court issued certain guidelines to be followed for drafting judgments/orders and highlighted the requirements of an order or judgment.

What an order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:- (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order, is based and (ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260). Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good

judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing, which is as follows:

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- "(i) Introduction section;***
 - (ii) Setting out of the facts;***
 - (iii) The law and the issues;***
 - (iv) Applying the law to the facts;***
 - (v) Determining the relief; including costs; and***
 - (vi) Finally, the order of the Court."***

Keeping in view various principles and observations including the definition of order and judgment, the Apex Court laid down certain guidelines for writing judgments and orders in **Joint Commissioner of Income Tax, Surat, v. Saheli Leasing and Industries Limited** (Civil Appeal No. 4278 of 2010) in para No. 7 of the judgment and they are extracted hereunder:

"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

Hence, a judgment or an order shall contain the above seven minimum requirements i.e., (a) to (g). In the present case, the judgment passed by the trial Court is bereft of such requirements. Therefore, the order of the Court below is against the requirements. When judgment is pronounced without reasoning, it is not a judgment in the eye of law for the reason that the requirement of reasoning either by trial or Appellate Court is to convey the mind of the judge while deciding such an issue before the Court. From a bare reading of the principle laid down in the

above judgment, the requirement of recording of reasons is only to show that the Court has focused concentration on rival contentions and to provide litigant parties an opportunity of understanding the ground upon which the decision is founded. Even if it is an order under the provisions of the local or central Act, still these basic requirements cannot be ignored by Courts. In such case, a judge is required to apply his/her mind and give focused consideration to rival contentions raised by both parties but in this case the Court below without independent consideration and appreciating evidence on record passed the impugned order. Such order or judgment without independent consideration is not legally sustainable since Courts do not act blindly or mechanically to pass orders or judgments. Courts ought to be cautious and only on being satisfied that there is no fact which needs to be proved despite being in admission, should proceed to pass judgments. Thus, in the absence of application of mind in arriving at such conclusion without considering the contentions independently is nothing but cryptic order. The need for recording of reasons is greater in a case where the order is passed at the original stage, a decision without reasons is like grass without root, the requirement to record reasons is one of the principles of natural justice as well and where a statute required recording of reasons in support of the order, it must be done by the authorities concerned as held by the Apex Court in **S.M. Mukerji v. Union of India** [1990 CrL.J.2148]. The increasing institution of cases in all Courts in India and the resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in the

Courts, in the view of Courts, it would neither be permissible nor possible to state as principle of law that while exercising power of judicial review on administrative action and more particularly judgment of Courts in appeal before in High Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials, firstly; a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard, secondly; the concerned authority should follow fair and transparent procedure and lastly; the authority concerned must apply its mind and dispose of the matters by reasoned order or speaking order. This has been uniformly applied by Courts in India and abroad (vide Assistant Commissioner, Commercial Tax v. M/s. Shukla (2010) 4 SCC 785). Here in this case, the order is only slipshod consideration of facts, sacrificing quality of judgment in the name of expediency. Even otherwise, it is the duty of the Court to state its reasons on each issue by due application of mind, clarity of reasoning and focused consideration; a slipshod consideration or cryptic order or decree without due reflection on issues raised in the matter may render such decree unsustainable and therefore hasty adjudication must be avoided and each and every matter that comes to the Court must be examined with seriousness it deserves as held by the Supreme Court in **Board of Trustees of Martyr Memorial Trust and another v. Union of India and another** [2012 (10) SCC 734]. From the principles laid down in the above judgments, the order of the Court is nothing but a slipshod one without focused consideration on the issues raised by both parties. In such case, the same cannot be sustained.

This Court reiterated the same principles in “***Leela Enterprises, Rep. by its Proprietor K.Surender and another v. Smt.Kamar Sultana @ Kamer Hassan***¹”

When a cryptic order is passed without any reason for arriving at such conclusion so as to enable the parties to know the reason for issuing such direction, such order is unsustainable under law. Here the Court below except expressing its opinion that it is proper to allow the petition to direct respondent Nos.7 to 29 to deposit monthly rents till disposal of the suit, is illegal as the opinion of the Officer of the Court is not supported by any reasoning.

As seen from the material produced before the Court, the Court below after impleading defendant Nos.7 to 29 in the main suit, directed the petitioner to serve summons on defendant Nos.7 to 29 through Court and on payment of process by order dated 12.04.2016, but no summons were served till date in the main suit and they are not aware about the proceedings pending against them after their impleadment. In the absence of serving summons on respondent Nos.7 to 29, issuing such direction is another serious irregularity committed by the Court below. When they are not parties to the suit and not served with summons in the suit, the tenants are not expected to know what direction issued against them by the Court below. Therefore, in the absence of service of summons to respondent Nos.7 to 29, inviting their objections by way of written statement in the main suit before the trial Court

¹ 2017 (5) ALT 75

and counter in the present petition, the order is unsustainable under law.

In view of my foregoing discussion, the contentions urged by the revision petitioner herein have to be accepted and the order under challenge is liable to be set aside. Though the learned counsel for the first respondent herein supported the order, in view of the reasons referred supra, the impugned order is cryptic, not conveying any reason to enable the parties to know as to how the Court below arrived at such conclusion. Therefore, the impugned order is set aside.

In the result, the Civil Revision Petition is allowed setting aside the order dated 12.07.2017 in I.A.No.652 of 2016 in O.S.No.128 of 2007 passed by the learned XII Additional Chief Judge, City Civil Court at Secunderabad. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 23.02.2018

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