

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.536 of 2018

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 08.12.2017 passed in I.A.No.1272 of 2017 in O.S.No.318 of 2003 by the Principal Senior Civil Judge, Guntur, dismissing the application filed under Order 47 Rules 1 and 2 and Section 151 CPC to review the order dated 01.06.2016 passed in I.A.No.39 of 2015 in O.S.No.318 of 2003 by the said Court.

2. The petitioner/plaintiff filed I.A.No.39 of 2015 under Order 6 Rule 17 of CPC seeking leave of the Court to amend the plaint, alleging that he filed the suit for specific performance of agreement of sale dated 20.10.1999 allegedly executed in his favour by the first respondent/defendant No.1 for valid consideration. While the matter stood thus, the first defendant, in conspiracy with defendants 2 and 3, engineered a plan, pursuant to which, the first defendant executed a General Power of Attorney with non-possessory agreement of sale bearing registered document No.6552/2003 dated 14.07.2003 in respect of the plaint schedule property and thereafter, defendants 2 and 3 were brought on record vide orders in I.A.No.891 of 2003 in O.S.No.318 of 2003. Subsequently, 4th defendant was also impleaded as necessary party vide orders in I.A.No.617 of 2011. But no amendment was made in consequence of impleadment of defendants 2 to 4 and therefore, he sought to amend the plaint incorporating paragraph No.13(a), cause of action paragraph and relief part with paragraph 3(aa) as mentioned in the affidavit filed

along with the petition. The Court below dismissed the petition on the ground that though defendants 2 and 3 were added long back in the year 2005 and defendant No.4 was added in the year 2011, petitioner failed to seek any consequential amendment and thereby, he is not entitled to claim such relief to amend the plaint.

3. The aforesaid order became final. But the petitioner conveniently filed a petition under Order 47 Rules 1 and 2 CPC to review the said order on the ground that there are some errors, such as, non-reference of written arguments along with several legal decisions.

4. The Court below dismissed the said review petition on various grounds. Aggrieved by the said order, the present revision is filed reiterating the grounds urged in the petition filed for review and more curiously, no ground is mentioned about the error in the order, in this revision, except reiterating non-consideration of written arguments filed by him and sought to review the order passed by the Court below setting aside the order passed in I.A.No.1272 of 2017 in O.S.No.318 of 2003 dated 08.12.2017.

5. During hearing, learned counsel for petitioner, Sri K. Jayakumar, has reiterated the contentions and mostly stressed on the ground of non-consideration of written arguments filed by petitioner before the Court below while deciding the application under Order 6 Rule 17 of CPC.

6. Learned counsel for the respondents has supported the order passed by the Court below as there was no error apparent on the face of record or mistake warranting interference of this Court by allowing the application in I.A.No.1272 of 2017 and setting aside the order passed in I.A.No.39 of 2015.

7. It is an undisputed fact that the suit was filed for specific performance against the first defendant. During pendency of the suit, a General Power of Attorney was allegedly executed by the first defendant in favour of defendants 2 and 3, who were brought on record vide order in I.A.No.891 of 2003 in O.S.No.318 of 2003. Again, 4th defendant was also impleaded as per the orders in I.A.No.617 of 2011 as the document was executed in his favour. The said petitions though allowed long back, the petitioner did not claim any consequential amendment in terms of Rule 28 of A.P. Civil Rules of Practice. But, conveniently he filed a petition under Order 6 Rule 17 CPC seeking leave of the Court to amend the plaint.

8. According to Rule 28 of A.P. Civil Rules of Practice, an application for amendment made under Order 1 Rule 10, Order VI, Rule 17, or Order XXII of the Code, shall also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules. Provided that verbal corrections may at any time be made in pleadings with the permission of the Court. Rule 28 of A.P.Civil Rules of Practice is intended to avoid protracted litigation on the one ground or the other and when the petitions filed under Order 1 Rule

10, Order 6 Rule 17 or Order 22 of CPC, shall also contain consequential amendment, the Court ought to reject the petition filed under Order 1 Rule 10 of CPC.

9. In the present case, the petitioner though filed two I.As., for impleading defendants 2, 3 and 4 without complying the mandatory requirement under Rule 28 of A.P.Civil Rules of Practice, the Court below, for one reason or the other, allowed those applications though the Court was under obligation to reject those applications in terms of Rule 28 of A.P.Civil Rules of Practice. Taking advantage of allowing those two applications, the petition was filed under Order 6 Rule 17 CPC seeking leave of the Court to carry out the consequential amendment i.e., in consequence of impleadment of defendants 2 to 4 by filing applications under Order 1 Rule 10 of CPC. Filing of such application is nothing but circumventing the law i.e., Rule 28 of A.P. Civil Rules of Practice. Therefore, on this ground alone, the petitioner is not entitled to. But, the same was not disputed before this Court.

10. Here, the main reason for seeking review is that failure to refer the written arguments and citations. But, no where in the petition, he did not disclose the citations relied on by him in the written arguments, except alleging that written arguments were not considered. It is not the case, what the written arguments contain. Mere failure to refer the written arguments is not an apparent error on the face of record warranting review of the order passed by the Court. But the counsel for petitioner contended that it is a mistake of

the Court, warrants interference by exercising power under Order 47 Rules 1 and 2 of CPC.

11. Order 47 Rule 1 permits any person considering himself aggrieved; by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; by a decree or order from which no appeal is allowed, or, by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

12. Here, the only contention of the counsel for petitioner is that non-consideration of written arguments is a mistake. But it is not a mistake, and if the Court considers the written arguments, if any, though no reference is made, that itself is not a ground to exercise power under Order 47 Rules 1 and 2 of CPC. Therefore, dismissal of the application by the Court below is in accordance with law.

13. Though the counsel for petitioner contends that he referred various judgments along with the petition before the trial Court, none of the judgments are furnished to this Court, at least, for reference. Therefore, those decisions need no consideration at this stage. Hence, I find no ground to interfere with the order passed by the

Court below since the order impugned is free from any legal infirmity warranting interference by this Court as the scope of its jurisdiction under Article 227 of the Constitution of India is limited, in view of the law declared by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**¹. Consequently, the civil revision petition is liable to be dismissed.

14. Hence, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

6th November, 2018

sj

M. SATYANARAYANA MURTHY, J



¹ (34)2005 (3) ALT (CrI.) 125 (SC)