

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.926 of 2018

ORDER:

1) Assailing the order dated 29.01.2018, passed in I.A.No.1239 of 2017 in O.S.No.214 of 2011 on the file of the I Addl. Senior Civil Judge, Rajamahendravaram, wherein an application filed Under Order VIII Rule 1 A(3) and Section 151 of C.P.C., to permit the petitioner to file documents, receive and mark the same as exhibits, was dismissed, the present Civil Revision Petition is filed.

2) The respondent herein filed O.S.No.214 of 2011 on the file of I Additional Senior Civil Judge, Rajamahendravaram, seeking to declare that she is the exclusive owner and possessor of the schedule property and also for a direction to the defendant to deliver vacant possession of the plaint schedule property. A written statement came to be filed disputing the averments made in the plaint. Pending the said suit, I.A.No.1239 of 2017 came to be filed seeking permission to file and receive the documents viz., un-registered will dated 12.11.2002, certificate dated 22.01.2011 issued by V.R.O., certifying that the schedule property is entered in the name of defendant and attested copy of FIR in Cr.No.15/2011 of Kadiam Police Station, for marking them as exhibits. It is his case that as the said documents were mis-placed could not be traced, were not filed at an earliest stage.

3) A counter came to be filed opposing the same. It is her case that the documents now proposed to be received were not

filed along with the written statement and no explanation is given as to why the same could not be filed along with written statement. It is further stated that the question of entertaining these documents would not arise after the closure of evidence.

4) After hearing both sides, the court below dismissed the application. Challenging the same, the present C.R.P. is filed.

5) Learned counsel for the petitioner would submit that recently the petitioner secured the documents, which are sought to be received and the said documents are very crucial to prove his case. He further submits that as per the amended Civil Procedure Code, the petitioner need not state any reasons for the delay in filing the documents.

6) The learned counsel for the respondent mainly submits that no reasons are given for non-filing of the documents along with the written statement though they were in existence by then. It is further stated that the application made before the court below does not anywhere indicate that in spite of due diligence the proposed documents could not be traced and filed.

7) As seen from the record, the suit was filed in the year 2011. The written statement came to be filed in the month of July, 2011. All the documents which are sought to be marked are dated prior to the date of filing of the written statement. Pursuant to the orders passed by this Court on 22.12.2017, the matter was remanded back to the Court below, as no reasons were given explaining as to why the documents are necessary for adjudication

of the dispute and also as to whether there was due diligence on the part of the petitioner in bringing the documents on record. Pursuant to the remand, the petitioner filed an application receiving the documents and exhibiting the same. Even after remand, no explanation was given, as to why the documents were not produced on that day. The reason mentioned was that the said documents were misplaced and as such could not be filed earlier. But, it is to be noted here that in the written statement filed in the year 2011, there is a reference to these documents. Such being the position, non-filing of the documents either along with the written statement or immediately thereafter assume significance. About 7 years later these documents are sought to be marked without any proper explanation as to why these documents cannot be placed on record at the earliest. Dealing with the provisions of Order VIII Rule 1 A (3) of C.P.C., and in a case which is similar to the case on hand, a learned Single Judge of this Court in *Managing Director, APSRTC, Hyderabad and others v. P.V.Surya Narayana*¹, observed as under:

“Application to produce documents filed merely stating that the same could be traced out only recently. But not stating clearly reasons for not filing proposed documents along with written statement. Reason stated, if treated as reasonable one, same can be a reason in each and every case. But, by no stretch of imagination, that can be said to be a valid reason. Petitioners did not even state in affidavit that despite their due diligence, proposed documents could not be traced out at relevant point of time. Order impugned does not, therefore, suffers from any jurisdiction error or patent perversity, so as to

¹ 2017(4) ALD 733

warrant interference by High Court in exercise of power of judicial review under Article 227 of the Constitution.”

8) In *Ravi Satish v. Edala Durga Prasad*² this Court held that grant of leave by the Court for receiving the documents shall not be on mere asking nor is the Court a mere Post-office to receive documents even in the absence of any reasons furnished.

9) In *Bagai Construction through its Proprietor Lalit Bagai v. Gupta Building Material Store*³ the Apex Court held as under:

“After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such

² (2009) 3 ALT 236

³ (2013) 14 SCC 1

an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC.”

10) Admittedly, the trial in the said suit commenced and the evidence appears to have been closed. At that stage the present application came to be filed.

11) In view of the judgments referred to above and as no reasonable explanation is given in not filing the documents at the earliest stage, I see no reasons to interfere with the order of the trial Court.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13) Miscellaneous petitions, if any, pending shall stand closed.

16.03.2018
gkv

JUSTICE C. PRAVEEN KUMAR

