

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4625 OF 2017

ORDER:

This revision petition is preferred under Article 227 of Constitution of India challenging the order dated 29.08.2017 in I.A.No.418 of 2017 in O.S.No.336 of 2009 passed by the Principal Senior Civil Judge, at Mancherial, whereby the petition filed under Order XVI, Rule -1 read with Section 151 of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was dismissed.

The revision petitioners are the petitioners/defendant Nos.16, 17 and 18 before the trial Court, they filed petition under Order XVI Rule – 1 read with Section 151 of C.P.C. to summon the certain witnesses along with concerned records to be examined on behalf of the petitioners/defendant Nos.16 to 18 on the ground that the witnesses listed in the petition are necessary for proper adjudication of the matter in the main suit on behalf of the petitioners, and prayed to summon those witnesses along with relevant records.

The following witnesses are sought to be summoned.

- (1) Paripally Venkataiah, age 82 years.
- (2) M.Mohanaiah, age 75 years.
- (3) Revenue Divisional Officer, Mancherial.
- (4) Tahsildar, Mancherial.
- (5) The Commissioner of Municipality, Mancherial.
- (6) Mohammad Yousuf Shareef, age 78 years.
- (7) Sub-Registrar, Macherial and
- (8) K.Samba Murthy, Advocate, Huzurabad.

Respondents filed counter denying material allegations inter-alia contending that there are no grounds to allow the petition and the petition filed by the petitioners in I.A.No.398 of 2017 for a similar relief was already dismissed and there are no sufficient grounds to summon the witnesses in question and prayed to dismiss the petition.

The trial Court dismissed the petition on the ground that there are no cogent and sufficient reasons to allow the petition.

Aggrieved by the said order, the present revision is filed under Article 227 of Constitution of India on various grounds mainly contending that the order of the trial Court is bereft of any reasons and the intention of the petitioners was not considered while deciding application filed under Order XVI Rule 1 read with Section 151 of C.P.C. and the reasoning recorded by the trial Court is against the law and prayed to set aside the order passed by the trial Court.

Learned counsel for the petitioners contended that unless sub-rule (2) of Rule 129 of Civil Rules of Practice is complied, the Court cannot summon the documents and examine the witnesses to mark those documents and placed reliance on the judgment of this Court rendered in “**Vooda Venkat Rao v. Vooda Surya Ramu @ Surya Rao**¹” in support of his contentions.

Learned counsel for the respondents argued in support of the order passed by the Court below.

As seen from the material on record, the petitioners filed a petition under Order XVI Rule 1 read with Section 151 of C.P.C. to

¹ 2016 (6) ALD 59

summon the witnesses along with concerned records to be examined on behalf of the petitioners/defendant Nos.16 to 18 to prove certain facts. But what are the documents to be summoned were not specified and most of the witnesses i.e. proposed witnesses Nos.1, 2 and 6 are aged more than 70 years and they are not in service. However, proposed witnesses Nos.3, 4, 5, 7 and 8 are public officers, from whose office documents are sought to be summoned, but the details of the documents sought to be produced before the Court were not mentioned anywhere except vague allegations. When the documents are public documents and required to be produced before the Court, the Court cannot pass order mechanically since the sub-rule (2) of Rule 129 of Civil Rules of Practice laid down certain procedure to be followed for summoning the documents, it is as follows:

"(1) That the document/documents the production of which is required shall be set out in the affidavit;

(2) That the relevancy of the document/documents shall be explained in the affidavit;

(3) That in cases where the production of a certified copy would answer the purpose, whether application was made to the proper officer and the result of such application shall also be indicated in the affidavit."

In paragraph No.4 of the judgment referred supra, the Court held that the petitioners have not pleaded that condition No. 3 of sub-rule (2) mentioned supra was complied with. Irrespective of whether the production of the proposed evidence would advance the case of the petitioners, the proposed documents being public documents, the petitioners are entitled to obtain certified copies thereof. The petitioners have not pleaded that production of

certified copies would not serve the purpose or that they made an application for obtaining the certified copies. As the petitioners failed to satisfy these mandatory conditions, they are not entitled to summon the public officer for production of such documents. In this view of the matter, the Court allowed the petition setting aside the impugned order therein.

Therefore, in view of the law declared by this Court that unless the petitioners made an application and failed to obtain the certified copies of the public documents, the Court cannot issue summons for production of any document. If for any reason, the petitioners applied for certified copies and failed to obtain certified copies, the Court on application shall issue a certificate regarding requirement of those documents, in such case the authorities concerned have to issue certified copies. But in the present facts of the case, the Court below did not advert to sub-rule (2) of Rule 129 of Civil Rules of Practice and the law declared by this Court in **“Vooda Venkat Rao v. Vooda Surya Ramu @ Surya Rao”** (referred supra). Apart from that the revision petition (C.R.P.No.4626 of 2017) filed against the order passed in a petition filed under Order XVIII Rule 3-A read with Section 151 of C.P.C. to examine the witnesses before examining the petitioners was allowed today and remanded the matter to the trial Court for fresh disposal in accordance with law. Moreover, the order of the trial Court is silent with regard to compliance of mandatory requirement under sub-rule (2) of Rule 129 of Civil Rules of Practice.

This Court while exercising power under Article 227 of Constitution of India cannot substitute its opinion since the power

under Article 227 of Constitution of India can be used to keep the subordinate Courts within their jurisdictional limits. Therefore, the order passed by the trial Court is hereby set aside while remanding the matter to the trial Court to decide the matter afresh keeping in mind the law declared by this Court in “**Vooda Venkat Rao v. Vooda Surya Ramu @ Surya Rao**” (referred supra).

In the result, the civil revision petition is allowed remanding the matter to the trial Court to decide the petition afresh keeping in mind the law declared by this Court in “**Vooda Venkat Rao v. Vooda Surya Ramu @ Surya Rao**” (referred supra) within a period of one month from the date of receipt of a copy of this order. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

22.01.2018
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