

THE HON'BLE SRI JUSTICE SANJAY KUMAR

**CIVIL REVISION PETITION Nos.1373, 1374,
1393 AND 1508 OF 2018**

C O M M O N O R D E R

Vodithala Educational Society, Hyderabad, the petitioner in these civil revision petitions filed under Article 227 of the Constitution, is the defendant in O.S.No.406 of 2002 on the file of the learned I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. The said suit was filed by the respondents herein seeking eviction of the petitioner society from the suit schedule property; mesne profits @ Rs.2,000/- per month from 01.02.2002 till the date of delivery of the suit schedule property; arrears of rent of Rs.1,30,000/-; damages of Rs.2,25,000/- in respect of the building and trees; and for costs.

While so, I.A.Nos.652, 793, 794 and 946 of 2017 were filed therein by the petitioner society seeking various reliefs. I.A.No.652 of 2017 was filed under Section 151 CPC to reopen its evidence for the purpose of producing further evidence. I.A.No.946 of 2017 was filed under Order 18 Rule 17 CPC to recall D.W.2 to give further evidence about the certified copies of G.P.A.No.292 of 1991 dated 23.09.1991 and G.P.A.No.83 of 1992 dated 21.02.1992. I.A.No.794 of 2017 was filed under Section 65 of the Indian Evidence Act, 1872, to receive the certified copies of G.P.A.No.292 of 1991 and G.P.A.No.83 of 1992 as secondary evidence. Finally, I.A.No.793 of 2017 was filed under Order 8 Rule 1A(3) CPC to receive certified copies of G.P.A.No.292 of 1991 and G.P.A.No.83 of 1992. By common order dated 05.02.2018, the trial Court dismissed all four I.As. Aggrieved thereby, the petitioner society is before this Court.

Heard Sri J.Prabhakar, learned counsel for the petitioner society, and Sri Rupendra Mahendra, learned counsel on caveat for the first respondent.

Parties shall hereinafter be referred to as arrayed in the suit.

The stand of the defendant society in its written statement was broadly as follows: The plaintiffs are not the owners of the suit schedule property, but misrepresenting the facts they collected huge amounts from it in the name of rents. It however came to light that the original owner of the property was Mohd.Khalilullah, who died in 1944. Claiming to be the lawful owners of this property, the plaintiffs entered into lease agreements with it on 01.05.1993. After making thorough enquiry, the defendant society purchased 2,733 square yards of land from Hameeda Begum and Muniba Begum and others, the rightful owners, under registered sale deeds dated 15.09.2000, 18.09.2000, 19.09.2000 and 21.09.2000 (Exs.B1 to B4). The plaintiffs therefore had no right over the property and could not seek its eviction therefrom.

By way of the subject I.As, the defendant society stated that in the course of cross-examination of its witnesses, D.W.1 and D.W.2, the plaintiffs asked them whether there were any link documents of its vendors under Exs.B1 to B4 and it was realised that such link documents were not available, though they found mention in Exs.B1 to B4. The defendant society stated that it recently got certified copies of the registered G.P.A Nos.292 of 1991 and 83 of 1992 from the office of the Joint Sub-Registrar-1, District Registrar's Office, Central Madras. It was for the purpose of marking these documents in evidence that the defendant society sought reopening of its evidence, recall of D.W.2, leave to belatedly

produce these documents and to receive them as secondary evidence.

Perusal of the common order under revision reflects that these applications were highly belated. The suit was posted for arguments after completion of the defendant society's evidence on 21.08.2017. It was only on 06.10.2017 that the subject I.As. were filed. The matter turned upon I.A.No.793 of 2017 filed by the defendant society under Order 8 Rule 1A(3) CPC seeking leave to produce these documents belatedly. The trial Court noted that no mention was made of these documents in the written statement and they were not filed along with it. As they dated back to the year 1991 and the suit was filed only in 2002, the trial Court found fault with the defendant society for not assigning any reasons for not filing these documents at an earlier stage. As there was no pleading to explain the delay in filing of the documents, the trial Court opined that no reason was made out for condoning the delay. As the trial Court did not find any grounds to grant such relief, the dismissal of the other I.As. was consequential.

Order 8 Rule 1A(3) CPC states to the effect that a document which ought to have been produced by the defendant along with the written statement, but is not so produced, cannot be received in evidence except with the leave of the Court.

The defendant society filed its written statement in the suit in August, 2003. Therein, it spoke of the sale deeds (Exs.B1 to B4), under which it claimed to have purchased the land from Hameeda Begum, Muniba Begum and others. It is an admitted fact that these documents mention the two GPAs which are now sought to be introduced in evidence. That being so, it is clear that it was well

within the power of the defendant society, which was aware of these GPAs even at the time of filing of its written statement, to take steps to procure certified copies thereof. However, it did not choose to do so till the cross-examination of its witnesses by the plaintiffs in relation to link documents. This delay on the part of the defendant society in taking timely steps is therefore fatal. It is not open to a litigant to improve its case from stage to stage depending upon the other side's stand.

When the leave of the Court is sought under Order 8 Rule 1A(3) CPC for belated production of documents, the defendant must necessarily explain the delay on its part. Perusal of the affidavit filed in support of I.A.No.793 of 2017 demonstrates that it was only after the cross-examination of its witnesses that the defendant society made attempts to obtain certified copies of these documents. Given the fact that these documents found mention in the sale deeds executed in its favour, marked as Exs.B1 to B4, it was for the defendant society to explain as to why it did not take any steps to produce them at the stage of filing of the written statement itself or a little later. No such attempt was however made by the defendant society.

In consequence, the trial Court was justified in holding that no grounds were made out to condone the delay on the part of the defendant society in producing these documents belatedly. All the more so, when the suit was coming up for arguments after conclusion of the trial. Be it viewed from any angle, this Court finds no grounds to interfere in the matter. The common order passed by the trial Court dismissing the I.As therefore does not brook interference, be it on facts or in law.

The civil revision petitions are accordingly dismissed.
Pending miscellaneous petitions, if any, shall also stand dismissed.
No order as to costs.

SANJAY KUMAR,J

16th **MARCH, 2018**
PGS

