

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.4689 of 2015

ORDER:

This civil revision petition is filed questioning the order, dated 27.10.2015, passed in I.A.No.726 of 2015 in O.S.No.188 of 2012, by the Senior Civil Judge, Bobbili.

The suit is filed for recovery of money. The defendant has filed written statement which is quite long and traverses the plaint that is filed. In the suit, the plaintiff's evidence has already commenced and some witnesses were also examined when I.A.No.726 of 2015 was filed to receive two documents under Order VIII, Rule-1A (3) CPC. The said application was opposed by the respondent and ultimately, the impugned order was passed, by which, the application was dismissed. Questioning the said order, the present revision petition is filed.

This court has heard Sri Kuriti Bhaskara Rao, learned counsel for the petitioner and Smt.T.V.Sridevi, learned counsel for the respondent.

The petitioner's contention is that these two documents are of profound importance to his case. Learned counsel points out that the defendant was not in the country and taking advantage of his absence in India, the plaintiff mismanaged the affairs of the company and also created the suit promissory note. It is his contention that on the date of the promissory note, the defendant was actually hospitalized and definitely was not in Bobbili to execute the alleged suit promissory note. Therefore, the learned counsel points out that these two documents are of fundamental importance for his case to prove that the suit promissory note is a created document.

In reply thereto, the learned counsel for the respondent relies upon Order VIII Rule 1A (3) and states that any document that is not produced along with the written statement can only be filed with the leave of the court. She also relies upon the judgment of a learned single Judge of this Court in *R.Saraswathi v. P.Rajamanikyam @ Veeran*¹ and argues that unless and until sufficient reasons are mentioned in the application filed to receive the documents, no documents can be received in evidence, if they are not filed along with the written statement. Learned counsel points out that the original passport and the medical report were in custody of the defendant when the written statement was filed, but absolutely no reason was given in the affidavit for his failure to file the same along with the written statement. Therefore, she prays this court to dismiss the revision petition while confirming the order of the lower court.

The point that arises for consideration is whether the lower court failed to exercise its jurisdiction correctly and whether the order passed by the lower court is correct or not.

This court on perusing the order the lower court notices that the lower court relied upon the very same judgment which is now cited by the learned counsel for the respondent. Apart from this judgment, the language used in Sub-Clause (3) of Order 8 Rule 1A is also clear, which says that no document shall be produced after the written statement was filed, except with the leave of the court. Leave of the court can only be granted if sufficient reasons are made out or valid reasons are pleaded for receiving the document.

In the case on hand, the affidavit that is filed in support of the application is conspicuously silent. No reason whatsoever is mentioned

¹ 2015 (5) ALT 527

for non-filing of the documents earlier. The application merely states that for “one reason or the other”, the petitioner was unable to file the documents. Order VIII Rule 1A was amended by Act 2/2002 and unless and until the court satisfied, the application to receive document cannot be allowed. The judgment of the learned single Judge (cited earlier) of this court is also clear. Satisfaction of the court based upon the reasons is mandatory to grant leave. Unless and until valid reasons are there, new documents cannot be received in evidence.

In the case on hand, the affidavit filed by the petitioner in I.A.No.726 of 2015 does not show any reason whatsoever for the failure to file these documents earlier. As rightly pointed out by the learned counsel for the respondent, these documents are in the custody of the revision petitioner. Therefore, the failure to file those documents earlier and assign any reason whatsoever by the petitioner, is in the opinion of the court fatal to the case of the petitioner. The affidavit filed does not in any way advance the case of the petitioner at all. Therefore, in line of the judgment reported in *R.Saraswathi v. P.Rajamanikyam @ Veeran* (1 supra) and in view of the express language in Order VIII Rule 1A (3), this court is of the opinion that the impugned order does not suffer from any infirmities.

For the reasons stated above, the Civil Revision Petition is dismissed. Needless to say that the court below should proceed with the trial and decide the matter in accordance with law, without in any way being influenced to what is mentioned in this order. In the circumstances, no costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 26.11.2018
Dsr

