

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3017 OF 2016

ORDER:

This civil revision petition is filed under Section 115 of CPC assailing the order dated 22.4.2016 in I.A.No.68 of 2016 in A.S.No.20 of 2013 on the file of the Court of XV Additional District Judge, Nuzvid.

2. Heard the learned counsel for both the parties.

3. A perusal of the record reveals that the first respondent herein filed O.S.No.49 of 2004, on the file of the Court of Senior Civil Judge, Nuzvid against the petitioner and respondent Nos.2 to 9 herein seeking relief of declaration. After fullfledged trial, the trial Court decreed the suit. Feeling aggrieved by the judgment and decree dated 29.11.2012 in O.S.No.49 of 2004, the petitioner and respondent Nos.2 to 9 herein preferred A.S.No.20 of 2013. During pendency of the appeal, the petitioner and respondent Nos.7 to 9 herein have filed I.A.No.68 of 2016 in A.S.No.20 of 2013 under Order XLI Rule 27 and Section 151 of CPC, to receive certain documents as additional evidence. The first appellate Court, after affording reasonable opportunity of hearing to both parties, arrived at a conclusion that the petition is not maintainable and consequently dismissed the petition. Aggrieved by the same, the petitioner-appellant No.3 preferred the present revision.

4. The learned counsel for the petitioner strenuously submitted that the first appellate Court ought to have disposed of I.A.No.68 of 2016 along with the main appeal. He further submitted that the first appellate Court committed grave error while disposing of the

I.A. filed under Order XLI Rule 27 of CPC independently during pendency of the appeal. To substantiate the argument, he has drawn the attention of this Court to **Union of India v Ibrahim Uddin**¹, wherein the Hon'ble apex Court held at paragraph Nos.52 and 53 as follows:

52. Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

53. In the instant case, the application under Order 41 Rule 27 CPC was filed on 6-4-1998 and it was allowed on 28-4-1999 though the first appeal was heard and disposed of on 15-10-1999. In view of law referred to hereinabove, the order dated 28-4-1999 is just to be ignored.

5. As per the principle enunciated in the cases cited supra, any application filed under Order 41 Rule 27 CPC has to be decided along with the appeal only. In the instant case, for one reason or the other, the first appellate Court passed the impugned order during the pendency of appeal. The facts of the case on hand are almost similar to the facts of the cases cited supra.

6. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, if the impugned order is allowed to stand, it would amount to miscarriage of justice.

¹ (2012) 8 SCC 148

7. In the result, this civil revision petition is allowed setting aside the order dated 22.4.2016 in I.A.No.68 of 2016 in A.S.No.20 of 2013 on the file of the Court of XV Additional District Judge, Nuzvid. Consequently, I.A.No.68 of 2016 is restored. The learned XV Additional District Judge, Nuzvid is hereby directed to dispose of I.A.No.68 of 2016 along with A.S.No.20 of 2013 as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. Miscellaneous applications, if any pending in this second appeal, shall stand closed.

Date: 11.6.2018.
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T. SUNIL CHOWDARY, J.

