

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.Nos.2624 & 2625 of 2017

COMMON ORDER:

Heard Sri V. Satyam Reddy for the revision petitioners.
No representation for the respondent.

2. Since these civil revision petitions arise out of common order dated 31.03.2017 passed in I.A.Nos.214 and 215 of 2017 in O.S.No.41 of 2012, they are heard together and disposed of by this common order.

3. The defendants in O.S.No.41 of 2012 in the Court of the Senior Civil Judge, Nalgonda, are the revision petitioners. The respondents filed O.S.No.41 of 2012 for recovery of Rs.2,41,500/- basing on suit documents dated 06.08.2009. The revision petitioners filed written statement and are contesting the execution, passing of consideration etc. The revision petitioners, after the trial is concluded, filed I.A.Nos.214 and 215 of 2017 for the reliefs, viz. to recall D.W.1 for marking the documents and for leave to receive the documents which are referred to in these applications. Through the order under revision, the trial Court dismissed both the applications. Hence, the present civil revision petitions.

4. Learned counsel for the revision petitioners contends that this Court in **Thota Venkata Rao v. Sunkara Raja Kumar**¹ has held that the trial Court is under obligation to frame an issue under Section 9 of

¹ 2006 (4) ALD 92

the Hyderabad Money Lenders Act, 1349 Fasli (“the Act” for brevity) and unless and until such an issue is framed, the trial ought not to be proceeded with. He further contends that, by referring to the documents which are sought to be marked by D.W.1, it can be persuasively shown that the respondent herein is a money lender and the suit transaction attracts the provisions of the Act and, therefore, the trial Court did not properly exercise the discretion while deciding I.A.Nos.214 and 215 of 2017.

5. I have perused the record and noted the submissions.

6. At the outset, this Court prefers to observe that the objection available to the revision petitioners herein under the Act cannot be said to have been foreclosed by the refusal of the prayer for recall and leave to file the documents. The learned trial Judge, upon consideration of the averments not only in the affidavit, but also in the written statement, found that there is no basis in the pleadings now to consider whether leave ought to be granted or not. This Court, in **Kalva Komuraiah and another v. Kalva Boddiah and others**², after considering the Scheme in the Code of Civil Procedure, 1908, from Order VI to Order XVIII, particularly the necessity of pleading before a document is taken on record, has held as follows:

“14. The proposition that any amount of evidence without pleading cannot be looked into is well established and this Court proposes to consider in the case on hand whether the revision petitioners have laid basis in the written statement on the

² 2018 (3) ALD 643

agreement dated 8.5.1994 which the defendant is seeking to get on record.

15.

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18. To the same effect is Order 8 Rule 1-A. Order 7 Rule 14 or Order 8 Rule 1-A directs the plaintiff or defendant as the case may be to file documents which he intends to rely on. Where a document entered in the list of documents is not produced along with plaint; it shall not be received in evidence without leave of the Court. Therefore, not only a plea but also the document in support of that plea is filed by party at the earliest point of time. Order 13 Rules 1 and 4 provide for producing original document at or before the settlement of issues and making endorsement on the documents filed in evidence. Order 16 deals with summoning and attendance of witness. Either the summoning of witness or production of document through a witness subject to the leave of the Court is permissible, only if that document satisfies the requirement of foundation in pleadings and the document is referred to in the list of documents in the plaint or written statement, but the copy or the original of such document is not filed along with the plaint or written statement for which leave is sought for from the Court and in such circumstances the leave can be granted. The exception to this procedure can be appreciated from marking documents through cross-examination. On the other hand, if leave to file document through a witness by disregarding the above procedural requirement, if is accepted, the production of documents in this fashion causes prejudice to the contesting party. This Court is in agreement with the reasons recorded by the trial Court for refusing the permission sought through memo filed by revision petitioners herein. In the above analysis, the revision fails and is accordingly dismissed. No order as to costs.”

7. Having regard to the view taken in the afore-cited decision, I am convinced that the order under revision does not warrant interference or any ground is made out under Article 227 of the Constitution of India because the documents now proposed to be brought on record are not supported by pleadings.

8. Civil revision petitions fail and are accordingly dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

November 26, 2018
N.B: C.C. in 3 days
(B/O)
MRR



S.V. BHATT, J