

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION Nos. 3190 and 3461 of 2018

COMMON ORDER:

The Civil Revision Petition No.3190 of 2018 arises out of the order dated 11.04.2018, passed in I.A.No.352 of 2018 in O.S.No.222 of 2012 by the Principal Junior Civil Judge, Sangareddy. The said I.A. was filed under Order XVI Rule 1 CPC by the petitioner-plaintiff to summon one B. Phanindra Kumar, Deputy General Manager, Estate Office, BHEL, Ramachandrapuram, Hyderabad, who issued a letter dated 17.09.2007, and also to state about the estate office procedure regarding the payments.

The other Civil Revision Petition No.3461 of 2018 arises out of the order dated 11.04.2018 passed in I.A.No.351 of 2018 in O.S.No.222 of 2012 by the Principal Junior Civil Judge, Sangareddy. The said I.A. was filed under Order XVI Rule 1 CPC by the petitioner-plaintiff to summon one P.V. Ramana Murthy, working in Department of Maintenance Service, BHEL, Ramachandrapuram, Hyderabad, to state about the estate office procedure about payment of amounts.

The trial Court, on consideration of the material on record, dismissed both the interlocutory applications, as the petitioner-plaintiff claims that he is in possession of suit schedule property as a tenant, and the dispute is in respect of the terms of tenancy, the defendant being a statutory body, invoked its jurisdiction for eviction of plaintiff

from the suit schedule property, the plaintiff's cannot be evicted without following due process of law; and when the evidence on both the sides was completed, and the matter was posted for arguments, the present interlocutory applications were filed by the plaintiff seeking to summon the officials of defendant company. The trial Court has opined that DW.1 was extensively cross examined in respect of the document Ex.B14, which is the reply dated 31.08.2002 along with other two letters dated 17.09.2007. The two letters were issued by BHEL. One letter was agreeing for renewal of the licence, and the other was for calling for eviction of plaintiff from the suit schedule property. The second letter for evicting the plaintiff from the suit schedule property was first served on the plaintiff, seeking his eviction. The other letter was not served on the plaintiff. In fact, DW1 has clarified that the first letter was issued due to oversight. BHEL, on realizing the mistake, drafted the second letter dated 17.09.2007, directing the plaintiff to vacate the suit schedule property. In fact, the trial Court held that there was an admission of DW1 about issuance of two letters dated 17.09.2007, and opined that no purpose would be served by summoning B. Phanindra Kumar and M.V. Ramana Murthy, working in the defendant organization, to prove those letters. In fact, the evidence is already available on record in respect of Ex.B14 about the defendant organization issuing two letters on the same day i.e., on 17.09.2007. On these grounds, the trial Court dismissed the two interlocutory applications. Aggrieved by the same, the petitioner filed these civil revision petitions.

Heard the arguments of learned counsel for the petitioner, and respondent.

Learned counsel for the petitioner submits that the recalling of witnesses under Order XVI Rule 1 CPC is essential to prove the case of the petitioner, as the defendant has issued two letters, one for renewal of the lease, and another for evicting the petitioner from the suit schedule property, but the second letter issued for evicting the petitioner was served while the other letter renewing the lease was not served. Therefore, to prove that the letters were issued by B. Phanindra Kumar, who was not called as a witness to prove those documents, the petitioner sought for calling him as witness in this case to prove the contents of the two letters, and also to prove the procedure about payment of rents.

Learned counsel for the respondent vehemently opposed for recall of B. Phanindra Kumar as DW1 was examined on behalf of BHEL who spoke about Ex.P14 which is available on record.

The learned counsel for the petitioner in respect of the procedure under Order XVI Rule 1 CPC, has placed reliance on **Gopala Krishna Murthy v. B. Ramchander Rao**¹, paragraph 2 of which reads as under:

“The Court below has not kept in mind the provisions of Order 16, Rule 1, Civil P.C. in dismissing the present application. Order 16, Rule 1, Civil P.C. provides for summons to be issued to witnesses who attend to give evidence or produce documents. It reads:

¹ AIR 1973 Andhra Pradesh 309

“At any time after the suit is instituted, the parties may obtain, on application to the Court or to such Officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.”

Counsel for the petitioner urged that the power conferred under Order 16, Rule 1, Civil P.C., has always to be exercised by the Court as application by the parties. In most matters of applications filed under O.16, R.1, Civil P.C. the Court has to issue summonses as prayed for by the applicant except in cases where the issuance of such summons in the opinion of the Court would amount to an abuse of process of Court or the Court otherwise considers it vexatious or malafide. I think the contention of the learned counsel is well founded. Counsel on either side cited some authorities before me to which I shall presently refer. A reading of all these authorities clearly supports the proposition submitted by the learned counsel for the petitioner.

Para 9 of **Gopala Krishna Murthy** (1 supra) reads as under:

“A reading of the above authorities leads me to lay down the following propositions.

- (1) Under Order 16, Rule 1, Civil P.C. it is the right of the party at any stage of the suit to make an application to the Court seeking that summons be issued to a witness either to give evidence or to produce documents.
- (2) The Court is not entitled to refuse such an application on the ground that it might cause delay in the trial of the suit on the adjourned date of the suit.
- (3) If the summons is not served by the adjourned date of the suit the party who filed the application to issue the summons would take the risk.
- (4) ---
- (5) ---
- (6) Though Order 16, Rule 1, Civil P.C. does not in terms impose any restrictions on the Court, the Court in exercise of its inherent jurisdiction may refuse to issue summons in an application made under O.16, R.1, Civil P.C. in those cases where it is satisfied that the application filed was not bona fide

or was vexatious or granting the application would result in an abuse of process of the Court. Except in these three above contingencies the application must almost always be ordered."

Learned counsel for the petitioner submits that the trial Court ought to have allowed the petition for recalling the witnesses to prove the document Ex.P14, as they were originally issued by the then officials of the organization, so that they can be cross examined.

In the above referred judgment, it is clearly indicated that under Order XVI Rule 1 CPC, the Court has to issue summons as prayed for by the applicant, except in cases where the issuance of such summons in the opinion of the Court, would amount to an abuse of process of Court, or the Court otherwise considers it vexatious or malafide. In the instant case, the trial Court observed that the defendant got examined DW.1, and he was extensively cross-examined by the plaintiff with regard to Ex.B14, along with two letters dated 17.09.2007, and all the material is before the Court as such there is no need again to recall the witness to speak about the two letters. As far as the procedure followed by the defendant organization is concerned, it is the petitioner who has to establish by bringing necessary evidence on record. It is opined by trial Court that DW1 has explained about the procedure followed by BHEL. Therefore, there is no need for summoning the witnesses B. Phanindra Kumar and M.V. Ramana Murthy, as such the learned trial Judge has exercised his discretion judiciously in rejecting the application for recalling of witnesses. The

orders passed by the trial Court do not suffer from any perversity or illegality.

IN THE RESULT, both the civil revision petitions are dismissed.

No costs. Miscellaneous petitions, if any pending, shall also stand dismissed.

GUDISEVA SHYAM PRASAD, J

29th June, 2018

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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